No. 18630

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

vs.

V-R RANCH COMPANY, a corporation,

Appellee.

Appeal From the United States District Court for the Southern District of California, Central Division.

Answering Brief of V-R Ranch Company, a Corporation, Appellee, to Brief of the United States, Appellant.

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Preliminary Statement.

The Appellant, United States, has filed one brief in its appeal from four separate judgments in condemnation. In this brief the Government assumes that the same facts found, legal conclusions, evidence, and testimony are involved in all four cases. This assumption is untrue so far, at least, as Appellee V-R Ranch Company is concerned. The V-R Ranch Company case was a separate trial involving different problems, different types of property, and, in many respects, different testimony than that involved in the other cases. We find it extremely difficult and burdensome to attempt to answer the Government's brief, and at the

same time, to refrain from commenting upon evidence introduced in the other three cases, to which the Government refers. We assume that the Appellants in the other three cases will file separate briefs for each case and the Appellee V-R Ranch Company will respond to the Government's brief only so far as it applies to the case of the *United States of America,* Appellant vs. *V-R Ranch Company,* No. 18630. We will not attempt to answer those portions of the Government's brief which deal with the other three cases because we are not familiar, except in a general way, with the trial of these actions, we do not have the records of transcripts of these cases, and we must assume that the attorneys representing the other appellees will fully and adequately answer those portions of the Government's single brief, if they can separate them out, that apply to each of the other cases. We cannot refrain from commenting, however, that we feel that the Government is entirely unjustified in filing but one brief in which the evidence apparently introduced in one case is cited and argued as if it effects the other cases. We feel that the Government has placed an unnecessary and burdensome task upon both court and counsel in not filing separate briefs on each case.

Statement of the Case.

The *V-R Ranch Company* case was filed August 12, 1957 [R. 9]. The hearings thereon commenced before a commission of three persons, appointed under Rule 71A(h) of the Federal Rules of Civil Procedure, consisting of Welburn Mayock, Chairman, Francis C. Whelan and Virgil F. Frizzell, Commissioners, on July 25, 1960, for the viewing of the *V-R Ranch Company* property by the commission. The viewing was com-

pleted on July 27, 1960 [R. 9]. Although it does not appear in the *V-R Ranch Company* record, the previous viewing of the general area of the properties in this project and all of the sales of both the Government and the land owners took place starting on December 14, 1959, in the *Benning* and *Dunshee* cases [*Benning,* Tr. 1-360], under a stipulation entered into that record that the general viewing of the area of the subject properties and of the comparable sales of both parties might be considered in relation to the subsequent trial of the *V-R Ranch Company* case [*Benning,* Tr. 9, lines 15-24]. Hearings on the *Benning* and *Dunshee* cases were commenced, before the same commission that subsequently heard the *V-R Ranch Company* case, on December 14, 1959, and continued to June 30, 1960. Hearings in the *V-R Ranch Company* case commenced July 25, 1960, and were concluded on December 5, 1960 [R. 9]. The complete report of the Commission is set forth in the record [R. 9-53]. *V-R Ranch Company* moved to confirm the report on March 23, 1961 [R. 53-54] and the Government filed objections thereto on April 7, 1961 [R. 76]. These objections by the Government to the commission's report in the *V-R Ranch Company* case are set forth in full in the *V-R Ranch Company* transcript [R. 62-77]. The District Court held its hearing *on these objections* on May 2, 1961, and on May 16, 1961, the District Court made its order whereby the said commission's report was "confirmed, approved and adopted in all respects" [R. 79]. The judgment was entered thereon on May 16, 1961 [R. 90]. The *V-R Ranch Company* judgment was reversed by this Court in July, 1961, on the sole ground that the District Judge erred in overruling

the objections of the Government in approving the report without awaiting a transcript of the testimony (See *United States v. Lewis* [9 Cir. 1962] 308 F. 2d 453), and remanded with instructions that the judgment be set aside and further hearings be conducted "upon the objections of the United States, as hereinbefore filed" (*United States v. Lewis,* 308 F. 2d 453 and 462). A consolidated hearing was had on September 25, 1962, on the *Benning, Dunshee,* and *V-R Ranch Company* cases [V-R Ranch Supp. R. 40]. At this consolidated hearing, the Government again presented and argued its objections heretofore filed, with the exception that objections numbered 2, 4, and 5 [R. 62-63], based upon the alleged inadequacy of the reports, were not argued again to the District Court, since this issue had been decided adversely to the Government's position in the previous appeal (*United States v. Lewis,* 308 F. 2d 453, 460 to 462). After this consolidated hearing with the benefit of the respective transcripts of testimony before him, and after complete argument and examination of the transcripts of testimony, the District Judge again approved and adopted the commission's report, and entered judgment, and these appeals followed. The consolidated hearing upon the objections (other than those dealing with the inadequacy of the reports) was heard upon the transcripts of testimony and in light of this Court's injunction that:

> "It is the function of the District Court to review the Commission's Report and findings *in the light of objections made to it and to resolve the issues presented by such objections.*" (*United States v. Lewis,* 308 F. 2d 453, 460 - italics added).

The issues presented by these objections [R. 62-77] (except those dealing with the inadequacy of the reports already decided on the prior appeal and properly not reargued in the second hearing) were resolved by the District Court. The issue on this appeal is whether or not the District Court committed error in resolving *the issues presented by these objections,* and we believe this is the only issue properly before this Court on this appeal, but for some reason, which the writer of this brief cannot fathom, the Government has apparently now abandoned these objections—except, strangely enough—the ones dealing with the adequacy of the report, which has already been resolved by this Court on its previous appeal. The Government apparently seeks to appeal not the District Judge's action in resolving the issues presented by these objections, but seeks to have this Court review the commission's action, raising, in addition to their contentions regarding the adequacy of the reports (Government Questions 1 and 2) two new questions set forth in their brief, page 3, as follows:

> "3. Whether the facts disclosed by the findings supplemented by undisputed facts in the records show that the awards are excessive and do not represent fair market price at the dates of taking.
>
> "4. Whether the awards by the commissions are clearly erroneous because not supported by actual facts in the records and because based on erroneous principles of valuation."

As we shall point out hereafter in this brief, these two new questions were not even presented to the District Judge. The single possible exception is the Government's objection No. 1 [R. 62] that the award is excessive and not supported by the evidence which is

couched in such general terms as to be completely meaningless and which was not supported before the District Judge by reference to the transcripts, which the Government on the previous appeal had insisted were necessary for the District Judge to resolve the issues raised by the objections heretofore filed.

The fact is that, none of the issues raised in this appeal were presented to the District Court for ruling as "issues presented by such objections." In this connection, the Government, in the case of *United States v. Twin City Power Company* (4 Cir. 1957), 248 F. 2d 108, took the position that the trial judge in that case had erred in setting aside the commission's findings because there was substantial testimony supporting the findings of the commission, and because the commission saw and heard the witnesses. In that case, it was held that the Court of Appeals reviews the actions of the District Judge and not the commission, saying on page 112 (248 F. 2d):

> "[2-4] We review the District judge, not the Commission."

In the instant case, the Government is seeking to have this Court review the action of the commission in light of the record, and we do not believe that the issues raised by the Government's arguments I, II, III and IV are properly before this Court. We will nonetheless, less it be contended that by our silence we admit the contentions, answer these arguments separately hereafter.

Before answering the Government's Arguments I, II, III and IV, we will comment upon some of the Government's contentions set forth under the designation in their brief of "Proceedings Below".

Comment on Government's Statements in Portion of Government Brief "Proceedings Below".

On Page 5 of their brief, the Government sets forth what they refer to as "undisputed" physical facts, apparently taking these facts from the *Benning* case. We do not have access to either the report or the transcript of testimony in *Benning*. The facts stated seem accurate *so far as they go* but they leave out many important and undisputed physical facts. We respectfully direct the Court's attention to the facts set forth in Findings 4 and 5 [R. 12-20], Finding 8 [R. 21-22], Finding 9 [R. 23-24], Finding 10 [R. 24-30], Finding 11 [R. 30-32], Finding 12 [R. 32-33] and Finding 13 [R. 34-35]. We believe that these *undisputed* facts are much more complete and comprehensive than those few selected physical facts cited by the Government in its brief. Although one of the primary points of dispute between the parties was the amount of water available to *V-R Ranch* property, all the Government says about this matter in its entire brief is that:

> "Also, findings were made at some length concerning water facilities available [R. 29-32]." (Govt. Br. p. 7).

The findings regarding the water resources available to the *V-R Ranch* property are set forth in detail in Finding 11 [R. 30-32], Finding 12 [R. 32-34] and Finding 14 [R. 35], to which the Court's attention is respectfully directed and which we will not repeat herein. The Government witnesses in expressing their opinions of highest and best use, value and comparable sales, *assumed* that the V-R property did not have sufficient water to support any subdivision development. [For example, see *Sando:* Tr. 3530 and 3795]. The

landowners' appraisers based their opinions of highest and best use, value and comparable sales on the assumption that there was sufficient water available for the purposes they opined upon.

In the *V-R Ranch* case above the water testimony covered 2429 pages of testimony and 146 exhibits (See page 48 of this brief and Appendices "E" and "F" to this brief) and the commission after detailed findings of the water resources available to *V-R Ranch Co.* properties, specifically found as follows:

> "The Commissioners further find that the aforesaid water resources, assuming maximum development as aforesaid, provide for the development of said property to the uses and purposes hereinafter in these findings set forth." [R. 32].

This finding is undisputed *on this appeal* although 8 of the 34 objections hereinbefore filed and resolved by the district judge concerned water findings (These objections are objections numbers 13, 14, 15, 16, 17, 18, 19 and 20 [R. 66-76]). Thus if we are to disregard objections 1, 2, 3, 4, 5, 32, 33 and 34 as too vague and general to constitute objections calling for the resolution as this Court stated on the previous appeal, of "some specific dispute" or some "specific inadequacy", it will be seen that of the remaining 26 specific objections, no less than 8 thereof dealt with the finding regarding water resources available to *V-R Ranch Co.* property. It can be thus seen that without considering water resources available to *V-R Ranch* property as compared with the water resources available to the so-called comparable sales (to say nothing of the varying topographies, sizes, locations, environmental factors, climates, etc. etc.) it is impossible to try to

have this Court determine which sales were and which were not sufficiently alike to be some reasonable index of value.

Continuing our comment on statements made in the Government brief under the title "Proceedings Below", the Government states on page 10 of its brief:

> "The Government's experts relied upon some 28 sales in Santa Ana and Coyote Creek Valley and the neighboring Ojai Valley . . . and others being from about one and a half miles from the land in question."

And again on page 11 of its brief, that:

> "They [the landowners experts] ignored all the sales relied upon by the government witnesses."

This latter statement is without support in the record, and the Government cannot point to one substantiating fact for this statement. We do not know about the other cases but in the *V-R Ranch* case the government witnesses relied upon 33 sales [set forth in Pltf. Ex. 3—Tr. 2128], 8 of which are located in Conejo Valley, the area to which the Government *now* objects. We will discuss this matter of comparable sales later in this brief, but at this stage we would like to point out that of the 28 sales which the Government says, without any foundation in the record or the transcript, that the landowners experts "ignored" (Govt. Br. p. 11) (not to be confused with the later contention in Argument III(B) (Govt. Br. p. 40) that the *commission* ignored these 28 sales), 8 of them are the identical sales used and relied upon by the landowners experts. These sales which are identical sales are as follows:

Govt. Sale 1	=	Defts. Sale 25-1 [Benning Tr. 126-130]
Govt. Sale 2	=	Defts. Sale 24-1 [Benning Tr. 120-123]
Govt. Sale 5	=	Defts. Sale 23-2 [Benning Tr. 203-211]
Govt. Sale 16	=	Defts. Sale 23-5 [Benning Tr. 269-277]
(Govt. Sale 31) (Govt. Sale 32)	=	Defts. Sale 23-6 [Benning Tr. 244-277]
Govt. Sale 41	=	Defts. Sale 23-3 [Benning Tr. 235-244]
Govt. Sale 45	=	Defts. Sale 22-2 [Benning Tr. 277-284]
Govt. Sale 46	=	Defts. Sale 22-1 [Benning Tr. 286-294]

How can the Government make the bald statement that they (the landowners' experts) ignored all the sales relied upon by the government witnesses when 8 of the 28 sales listed in Appendix "B" to the Government Brief are identical with those used by the landowners experts. The Government continues (Govt. Br. p. 11):

> "Instead, they said that the Conejo Valley—was an appropriate area to find comparable sales."

The clear inference from this statement is that only the landowners' witnesses used Conejo Valley sales. This, of course, is not true. The Court's attention is called to the fact that the landowners' experts used, to varying degrees, "Conejo Sales", which are in the 19 series—19-1 to 19-11 [Deft. Ex. "V," Tr. 66]. An examination of Plaintiff's Exhibit 47, Appendix "A" to this brief [Tr. 3572], the Summary and Classification of Acreage Sales, illustrative of the testimony of Laurence Sando, government appraiser, shows that 8 of the sales relied upon are Conejo Valley sales, the area to which the Government *now,* for the first time objects. For the convenience of this Court we attach a copy of Plaintiff's Exhibit 47 to this brief as Appendix "A". These 8 "Conejo Valley" sales are listed

on the third page of Plaintiff's Exhibit 47 [Tr. 3572] as "Summary and Classification of Acreage Sales in Conejo Valley" and are Government sales Nos. 51 through 58. Of these 8 Conejo Valley sales ("illustrative of the testimony of Laurence Sando"), 6 of them are the same sales as used by the *V-R Ranch* appraisers, Mr. Mann and Mr. Jerry Carll. These duplicate Conejo Valley sales are as follows:

Plaintiffs Sale No.	Defendant's Sale No.
51	19-9 [Benning Tr. 326, line 12, to 329, line 7].
52	19-10 [Benning Tr. 331 line 24, to 338, line 14].
53	19-6 [Benning Tr. 331, line 14, to 332, line 13].
54	19-2 [Benning Tr. 338].
55	19-3 [Benning Tr. 329, line 9, to 331, line 13].
56	19-8 [Benning Tr. 329].

We are unable to understand how the Government can say that the landowners' experts ignored *all* of the sales relied upon by the government witnesses when, of the 33 sales relied on by the government experts, 15 of the landowners' sales are exact duplicates of their sales, and which were brought into the case by the landowners' witnesses before the government witnesses even testified.

As a matter of fact the Government had a list of 34 sales [See Pltf. Ex. 3—Tr. 2128] and their witness Mr. Evans used 23 sales on his "Comparable Sales Pattern" [Pltf. Ex. 9—Tr. 2395] and Mr. Sando used 33 sales on his "Summary and Classification of Acreage Sales" [Pltf. Ex. 47—Appendix "A"—Tr. 3572].

The landowners' sales are listed on Defendant's Ex. "V" [Tr. 66].

The list of sales purportedly used by the landowners' appraisers in Appendix "C" to the Government brief is incomplete so far as *V-R Ranch* case is concerned. In addition to the sales there listed, the *V-R Ranch* appraisers also used 10 additional sales not listed on Appendix "C" to Government brief. These sales are 20-1, 20-2, 20-3, 20-4, 22-1, 22-2, 23-2, 23-5, 24-1, 25-1 [See Deft. Ex. "V"—list of comparable sales in evidence *by stipulation*—Tr. 66].

Appendix "B" to the Government brief is likewise incomplete since the government appraisers used 9 additional sales which are not listed in said Appendix "B". These are Sales Nos. 50A, 51, 52, 53, 54, 55, 56, 57 and 58 [See Pltf. Ex. 3—Tr. 2128 and Pltf. Ex. 47 Tr. 3572—Appendix "A" to this brief].

Furthermore the Commissioners viewed all of the sales, examined them very carefully [See Benning Tr. 126-329], had them discussed and analyzed by the witnesses, with topographic maps, photographs and detailed analysis. Defendant's 11 "Conejo" sales (19-1 to 19-11) were described in detail by the appraisers George S. Mann [Tr. 1273-1344] and Jerry Carll, Sr. [Tr. 1781-1840].

As for the Conejo Valley sales (Sales 19-1 through 19-11), the *V-R Ranch* appraisers used them to a limited degree (as discussed more fully in the brief hereafter), whereas the government appraiser, Mr. Sando used 8 "Conejo" sales (Sales No. 51 through 58) and of these 8 Conejo Sales, 6 were duplicates of the sales used by the *V-R Ranch* appraisers [See and compare Pltf. Ex. 3—Tr. 2128; Pltf. Ex. 47—Appendix "A" to this brief—Tr. 3572; Deft. Ex. "3D"—Tr. 1265 and Deft. Ex. "3F"—Appendix "B" to this brief—Tr. 1684].

Again commenting on the Government's statement on page 11 of its Brief, that: "They [the landowners' experts] ignored *all* of the sales relied upon by the Government witnesses. Instead, they said that the Conejo Valley . . . was an appropriate area to find comparable sales," we wish to point out that not only did all of the appraiser witnesses use "Conejo" sales, to some extent, but the *inference* implied in the above sentence that the landowners' experts relied only on "Conejo" sales is completely false.

For the convenience of this Court, and because we will be referring to it from time to time, we attach a copy of Defts. Ex. "3F" [Tr. 1684] as Appendix "B" to this brief.

Take for example *V-R Ranch* appraiser, Jerry B. Carll, Sr., whose land classifications were followed more closely than those of the other witnesses [compare Finding 10—R. 24-30 with Deft. Ex. "3F", Tr. 1684] and referring to said Appendix "B", it can be seen that Mr. Carll utilized 19 sales over all and of these sales only 6 are "*Conejo*" sales [See second page of Deft. Ex. "3F"—Tr. 1684, Appendix "B"]. These 6 sales are as follows: 19-6; 19-7; 19-8; 19-9 and 19-11. Of these six "*Conejo*" sales used by Mr. Carll, four of them are also government sales, as follows: 19-6 = Govt. No. 33; 19-8 = Govt. No. 56; 19-9 = Govt. No. 51 and 19-10 = Govt. No. 52.

Furthermore on his classification No. 1—prime subdivision land [Deft. Ex. "3F"—Tr. 1684, Appendix "B"], adopted by the Commission as the *only* land (321.03 acres) with the highest and best use for the development and use as residental subdivision [See

Finding 18(a)—R. 43], Mr. Carll did not use or rely upon a single "*Conejo*" sale. He used our sale 22-1 [Govt. sale 46—*Benning,* Tr. 286-294], sale 23-5 [Govt. sale 16—*Benning,* Tr. 296, lines 269 to 277], sale SB 1 and sale SB 2. The sales Mr. Carll used are set forth on Defendant's Exhibit "3F"—Mr. Carll's opinion chart [Tr. 1684—Appendix "B"].

On Mr. Carll's classification No. 2—154.26 acres (adopted by Commission as its *classification* No. 2 [R. 26],) the Commission found a highest and best use not as subdivision but for development as rural homesites [See Finding 18(b)—R. 43]. An examination of Appendix "B" [Deft. Ex. "3F"] shows that Mr. Carll used and relied on 5 sales [listed on said Ex. "3F"] and only 3 of these 5 sales are "*Conejo*" sales —these "*Conejo*" sales are: Sale 19-7; 19-8 [Govt. sale 56—See *Benning,* Tr. 329]; 19-10 [Govt. Sale 52—See *Benning,* Tr. 331, line 24, to 338, line 14]. The other two sales used and relied upon by Mr. Carll on his classification 2, was sale 22-2 [Govt. sale 45—See *Benning,* Tr. 277, lines 1-284] and sale SB 2, which "they [the government witnesses] ignored."

[See and compare "Summary and Classification of Acreage Sales", illustrative of testimony of Laurence Sando—Pltf. Ex. 47—Appendix "A"; Pltf. Ex. 3 "List of Comparable Sales"—Tr. 2128 and "Chart No. 1—Opinion of Value of Whole" (1594.2 AC) by Jerry B. Carll, Sr.—2d page of Deft. Ex. "3F"—Appendix "B"].

In the face of such a record it is inconceivable to us how the Government could make such an irresponsible and untrue statement that the landowners' experts "ignored all of the sales relied upon by the government

witnesses" and that, "*Instead,* they said that Conejo Valley——was an appropriate area to find comparable sales" (Govt. Br. p. 11), with the clear inference that the issue involves merely a choice between two different "groups" of sales.

Again on page 11 of its brief, the Government states: ". . . since the crucial issue in the case is which group of sales are comparable property we will not undertake even to summarize what the testimony was." The issue is not, and never was between two "groups" of sales—both parties introduced, discussed, analyzed and compared many sales in varying locations and of varying sizes and topography, varying uses, climates, water resources and environmental factors. All these sales were introduced into evidence without objection and by stipulation. The Commission did not accept one "group" and reject another "group." Instead, after carefully examining all of the sales called to their attention by the parties, and hearing the witnesses for both sides describe, discuss, analyze and compare these sales with the subject properties, or portions thereof, the commission did not "adopt" any particular group of sales. They did make a finding as follows:

> "21. The Commissioners find that, in consideration of *all* of the evidence, the burden of proof of the defendant has been sustained, and that compensation in the amounts hereinafter set forth is sustained by a fair preponderance of all of the evidence, including evidence obtained by the Commission on its view of the premises, the surrounding area, and *the alleged comparable properties to which the attention of the Commissioners was directed by the parties.*" [R. 48-49—italics added].

The Government on pages 11 to 15 of their brief purports to set forth "highlights of evidence" in the *Battin* transcript. We shall not respond in detail because we do not have the *Battin* transcript, but we would like to point out that such "highlights of evidence" can have no importance or relevance to the *V-R Ranch* case. The *Battin* case was a taking of only 3.28 undeveloped acres out of a larger parcel of 68.51 acres, compared with the *V-R Ranch* taking of 826.06 acres out of 1594 acre larger parcel, and included on the part taken in the *V-R Ranch* case was an existing lake or reservoir with a surface elevation of 491 feet, an area of 17.27 acres, and capable of storing as of the date of the take approximately 338 acre feet of water [R. 25].

Furthermore unlike the *Battin* case, the *V-R Ranch* property was extensively developed as found by the Commission as follows:

> "(g) Classification No. 7. An area of 12.06 acres referred to in some of the testimony herein as either "Headquarters Area" [395] or "Dude Ranch Area," comprised of level, highly developed lands upon which are located the following-described ranch improvements: Main ranch house, domestic water lines supplied from nearby springs and other improvements, a duplex, foreman's house and office, guest house, bunk house, ranch kitchen, dining room and apartment, horse barn and corrals, dairy units and milker's house, work shop, butcher house, hay barn, hay shed, sale house and cattle pens, tool shed, filling station and other minor improvements, including roads, fences, underground piping, cattle guards, and so forth. That

> said improvements at the date of said take constitute a unit for agricultural products, and a dairy, cattle and dude ranch. That in additional to the foregoing improvements, the said parcel CR 17—826.06 acres—included an irrigation system—permanent and mobile—water distribution system, concrete pipe basins and concrete watering troughs, fire hydrants, sprinkler outlets, etc." [R. 28-29].

For the foregoing reasons, and by reason of the entirely different type, size and improvements of *V-R Ranch* property and the *Battin* property, we do not believe that the alleged "highlights of evidence" from the *Battin* transcript have the slightest relevancy to the *V-R Ranch* case.

Comment on Government's "Specifications of Error."

The so-called Specifications of Error, set forth on pages 15 and 16 of the Government's brief, require a brief comment before answering Government's Arguments I, II, III and IV.

Appellee seriously doubts the sufficiency of the Government's Specifications of Error to properly present to this Court the question of whether the District Judge properly performed his function in resolving the issues presented by the objections heretofore filed. The Specifications of Error purport to be 15 in number but upon analysis, it is clear that there are many duplications. Specifications 1, 2, 4, 9, 10, 11, 13, 14 and 15 do *not* comply with Rule 18(2)(d) of Rules of this Court that each specification shall set out "separately and particularly" each error intended to be urged, and

where the error alleged is to a ruling upon the report of a master the specification shall state the "exception to the report and the action of the court upon such exception." These Specifications are so general and vague as not to apprise this Court or Appellee what the errors complained of are (See *Lee v. United States* (CA 9) 238 F. 2d 341).

Specifications 3, 5 and 6, though stated in different words are the same objection and seek to raise again the issue of the adequacy of the commissions' report already decided by this Court on the previous appeal. We will hereafter answer this issue under our Argument I. We believe the reasoning of this Court in *United States v. Lewis (supra)* is unanswerable. We can but repeat what we said in the prior appeal on this issue in response to the same contentions. For the convenience of the Court, rather than repeating such matters in the body of this brief, we attach hereto as Appendix "C", our "Answer to Appellants Argument "C"—from Appellees Answering Brief in *United States v. V-R Ranch,* No. 17501, being pages 31 through 34 of that brief".

Specification 7 states that the Commissioners reports are clearly erroneous for five stated reasons, which we will answer under our Arguments II and III in answer to Government's Arguments III and IV.

Specification 8 (Govt. Br. p. 16) has no bearing on *V-R Ranch* case, but only to *Battin* case.

Specification 9, that "The awards are not supported by substantial admissible evidence", is so vague as to be completely meaningless. We can but repeat what we said in our brief on the previous appeal where we stated:

"Referring to the third objection the Government made to the report [R. 62], Appellee faces the same dilemma that it faced before the District Court. The Government was unable or refused to specify the nature of the so-called "irrelevant and immaterial matter and speculative and incompetent testimony" to which it refers. It did not before the District Court and still does not before this court specify the nature of this matter. It would not state whether it was referring to any of the exhibits in evidence, which were before the District Court, or whether it was referring to oral testimony, or whether the testimony referred to valuation matters or water resources, or what the general nature of the matter was. It was pointed out that Appellee was ready to discuss and analyze any specific bit of evidence or testimony, but could not do so in response to a general shot-gun objection, which, in the absence of specification, is meaningless. It was pointed out that since the Government's attorney had been in charge of the case throughout, was present at all sessions, and had taken voluminous notes of the testimony, that he was in a position to point out the objectionable matters to the court. Upon his refusal to do so, the objection was untenable. . . . But surely the Government's attorney must have known, at least in general terms, the items of testimony to which it objects, if the objection was presented in good faith; but Appellee still does not know what the Government is talking about."

The Government still has not specified what evidence (it was all admitted without objection and by stipulation) it considers inadmissible.

Specification 11 that "The district court erred in submitting these cases to commissions under Rule 71A(h)", is not a proper issue on this appeal. It has already been decided adversely to the Government's contentions in *United States v. Hall* (1960—9 Cir.), 274 F. 2d 856 (certiorari denied by Supreme Court May 23, 1960 *re United States v. Hall,* No. 850 O. T. 1959).

Specification 12 that "The commissions' findings that there were very few sales of comparable properties in the immediate area are clearly erroneous and contrary to the records", is the only one of 34 objections of plaintiff to the commissioners' report [R. 62-76] which the Government has seen fit to discuss on this appeal. This is objection No. 10 [R. 64-65] which reads as follows:

> "10. Contrary to the allegation in Finding No. 5 of said report at page 9, lines 4-5, that "there were very few sales of real property of sizeable acreage within the area" there were numerous such sales consisting of the following:

Plaintiff's Comparable Sale No.	Acres	Distance by Highway from subject parcel
2	62.15	7.0 miles
5	183	2.4 miles
16	68	5.5 miles
17	824.90	7.6 miles
27	188	8.2 miles
35	78.69	14.5 miles
36	131	14.2 miles
45A	230.4	17.9 miles
46	128.12	17.2 miles"

The foregoing is the list of nine sales which the Government called to the district court's attention as contradicting the finding objected to. The finding to which this objection was made (designated as "Finding No. 5 of said report at page 9, lines 4-5", which refers to the mimeographed report) consists of the phrase in the last paragraph on page 19 of the record. The entire paragraph is as follows:

> "There were very few sales of real property of sizeable acreage within the area and there were very few sales of real property within the area which this Commission found to be comparable or similar to CR 17, as a whole, and that for all of the reasons hereinabove set forth it was necessary for the undersigned Commissioners, in arriving at the fair market value of said parcels, to consider sales of comparable or similar properties outside of the immediate area of said parcels." [R. 19—last paragraph].

It can be seen that the entire paragraph when read in its entirety and in context is actually twofold:

(1) "That there were very few sales of real property of sizeable acreage within the area." This is the phrase to which objection 10 [R. 64-65] was directed and which is included in the specification in the objection of "Finding No. 5 of said report at page 9, lines 4-5". This is the substance of Specification 12 (Govt. Br. p. 16), although the Government, with characteristic lack of precision, changes from "within the area" [R. 19] to "in the immediate area" (Govt. Br. p. 16), and from very few sales of "sizeable acreage" [R. 19] to very few sales of "comparable properties" (Govt. Br. p. 16), the question, as we see it

is, did the district judge err in resolving the issues raised by *this objection.* On *this* issue objection 10 [R. 64-65] challenged the finding, "There are very few sales of real property of sizeable acreage within the area," and listed nine sales [R. 65] relied upon by the Government appraisers as refuting this finding. What is "sizeable", and what is "within the area?" Bearing in mind that V-R Ranch was approximately 1600 acres and the part taken [CR. 17] was 826 acres, when we examine these sales, as listed in objection 10 [R. 65] as to size, we find that there were only six sales of over 100 acres—these are Plaintiff's Comparable Sales No. 5 [Deft. No. 23-2]; No. 17; No. 27; No. 36; No. 45A and No. 46 [Deft. No. 22.1]. If we consider these six sales as "sizeable", how many of the six are "within the area"? If we say within 10 miles of CR 17 is "within the area", then it appears (from the Government's own list [R. 65]) that there are only three sales of sizeable acreage (100 acres or more) within 10 miles of CR 17—these are Sale No. 5—183 acres, 2.4 miles distant [this is also Defts. Sale No. 23-2]; No. 17—824.9 acres, 7.6 miles distant and No. 27—188 acres, 8.2 miles distant. Certainly three sales out of 34 sales [See Pltf. Ex. 3—Tr. 2128] used by the Government are "very few sales," and based on the Government's own objection, the finding to which the objection was directed that, "There were very few sales of real property of sizeable acreage within the area" [R. 19] is not clearly erroneous, but well supported.

(2) The second aspect of the finding to which the Government objected below was the next phrase of the paragraph [last paragraph R. 19] reading:

> "and there were very few sales within the area which this commission found to be comparable or similar to CR 17, as a whole . . ."

This part of the finding was the target of objection No. 11 [R. 65] which objection amounts to no more than a word quibble, that the finding was "misleading" and does not provide a basis for the commissions' use of sales outside the area in that there was no evidence in the proceedings as to any sales outside "the area", which were comparable or similar to CR 17 as a whole [R. 65]. All the witnesses used sales outside "the area", all the sales were introduced without objection, the commission saw them all. The answer to objection 11 was simple. None of the witnesses contended there were *any* sales inside the area or out that were comparable *as a whole* to CR 17. Furthermore the report says, "and for all the reasons hereinabove set forth" [R. 19—in last paragraph] it was necessary to "consider" sales of "comparable or similar properties outside the *immediate area* of said parcel." [R. 19—last paragraph]. (italics added). These reasons, among others, are the tight ownership in which properties in the immediate area were held [R. 19]; that property in the immediate area were in transition stage [R. 19]; also Finding 7 [R. 20-21] which is unchallenged. Since this limited issue raised by objection No. 11 [R. 65] is now apparently abandoned by the Government on this appeal, it is not within the ambet of Specification 12, we will not *further* argue this point.

Specification of Error No. 13 states that the district judge erred in that:

"13. The landowners' valuation evidence was inadmissible for lack of proof of foundation facts." (Govt. Br. p. 16).

While the issue attempted to be raised by this specification will be answered more fully hereafter in our answer to the Government's Argument III, we cannot refrain from pointing out that as a Specification of Error, it is frivolous, and raises no proper issue before this Court. No objection to the introduction of any evidence was made either to the commission or to the district judge. We do not know what "valuation evidence" the Government is talking about and we respectfully submit the Government does not either. Do they mean the valuation opinions expressed by the witnesses?—and if so which witnesses and why?—the witnesses' opinions of highest and best use?—the physical facts concerning the property?—the condition of the market?—the climate?—the water resources available to CR 17?—the reconstruction study?—the sales?—and if so, what sales?—and what foundation is lacking? We can only assume the Government means the comparable sales (if it means anything by this, "how long is a piece of string?" objection). But which ones? The sales data of all of the sales for both parties was admitted *by stipulation* and without objection [See list of Government sales, Pltf. Ex. 3—Tr. 2128; see also list of landowners' sales in evidence by *stipulation*—Deft. Ex. "V"—Tr. 66.] Each of the landowners' experts discussed, analyzed and compared each sale in great detail [see testimony George S. Mann—Tr. 1273-1341; Jerry B. Carll, Sr., Tr. 1781-1840]. Every conceivable *fact* regarding each sale was brought out on both direct and cross-examination.

Specification of Error 14 states:

"14. The landowners' opinion evidence was contradicted by all the facts in the record."

This specification is so general and sweeping as to verge on the ridiculous. Certainly the Government cannot mean that *all* of the facts contradicted these opinions but that is what the specification states. No such issue was ever presented to the district judge whose function, now being tested on this appeal, is to resolve the issues raised by the objections. Certainly the facts set forth in Finding 5 [R. 13-20] relating to the economy, history and growth of the area, including the immediate environs of the subject parcel do not contradict these opinions—nor do the facts set forth in Finding 6 [R. 20] or Finding 7 [R. 21] contradict these opinions—nor the physical characteristics and highway and transportation facilities set forth in Finding 8 [R. 21-23]—nor the facts relating to the climate in the area [R. 23-24]. Can it be said that the facts set forth in Finding 10 [R. 24-30] relating to the area, topography, terrain, vegetation and improvements on the larger parcel of which CR 17 was a part only, contradict "the landowners opinion evidence." And what about the water resources available to the property set forth in Finding 11 [R. 30-32] and Finding 12 [R. 32-34] and Finding 13 [R. 34-35] and the highway access and freeway development in relation to CR 17 set forth in Finding 15 [R. 35-36]? Yet the Government says *all* the facts contradict our opinions evidence and the specification is patently ridiculous. If by "landowners' opinion evidence" the Government means the opinions of value expressed, the Government loses sight of the fact that the commission did *not*

adopt these opinions of value. As we stated in our brief on the previous appeal, the opinions of *just compensation* of the defendant's witnesses were as follows:

Ralph B. Nunnelley	$2,322,000.00	[Deft. Ex. "2W," Tr. 765]
George S. Mann	$2,023,500.00	[Deft. Ex. "3D," Tr. 1263-1265]
Jerry B. Carll, Sr.	$2,016,475.00	[Deft. Ex. "3F" (Appx. "B"), Tr. 1681-1684]

The award of $1,163,400.00 [R. 51] is thus *over* $850,000.00 *less* than the *lowest* opinion of the landowners' experts.

As stated in *United States v. Waymire* (10th Cir. 1953), 202 F. 2d 550, 554:

> "No good purpose would be served in reviewing in detail the testimony of the several witnesses. It is enough to say that the several awards as finally approved by the court and merged into the judgment are adequately sustained by evidence in respect to amount and therefore are not subject to attack for excessiveness."

Specification of Error 15 stating that:

> "15. The judgments include duplicated or contradictory awards."

Will be answered hereafter in our response to Appellants Argument IVB. However, we wish to point out at this time that this specification does not set forth any issue whereby the District Judge erred in resolving the issues raised by the objections since the objections did not present any such issue to the district judge for resolution [See Objections R. 62-77].

ARGUMENT I.

Contrary to What the Government Argues in Its Arguments 1 and 2, the Adequacy of the Commission's Report Is Not Now Open to Appellate Review.

In its questions 1 and 2, the Government seeks to again raise the question of the adequacy of the commission's report under Rule 71A(h), Federal Rules of Civil Procedure, and to raise the question of whether the "conclusory findings" are supported by adequate subsidiary findings. We do not know which of the twenty-two findings made by the commission [R. 9-53] the Government means to characterize by the adjective "conclusory" (the dictionary definition of which is "conclusive [rare]"), but we do not believe that the adequacy of the findings is again properly before this Court. It is beyond question that the findings in question have clearly been held to be adequate by this Court on the prior appeal, and it seems likewise clear that the ruling is controlling as the "law of the case", not only upon the court below, but upon this Court.

In *United States v. Lewis* (1962), 308 F. 2d 453, 459, this Court said on page 460:

> "*Benning and Morrison Cases.*
>
> "Here, as in the Lewis and Gill cases, the United States objected to the commission's report and findings before the district court as inadequate and makes the same contentions here on appeal. In these cases, unlike the two already discussed, the contentions are without merit.
>
> "Here the report and findings meticulously deal with the question of highest and best use. A substantial portion of the property was found to

be residential in character; for subdivision or rural estates. A lesser portion was found to be most useful as watershed protection or for cattle grazing. Subsidiary findings dealt with various aspects of residential land values; the locational potentialities of the area with respect to the population centers of Southern California; climate and cultural advantages of the Ojai Valley; topography; water supply and potential development of water resources; highway access; the existence of willing buyers.

"[7] The objections of the United States in those cases seem to be directed to the fact that the findings and report do not disclose what proof the commission relied on and why the commissioners chose to believe certain witnesses and accept certain evidence as more credible than other witnesses and other evidence. Findings need not be so comprehensive. They should, as the United States asserts, show "how" material factual disputes relating to value have been resolved. But this requirement relates to a showing of the result—the fact as found—and not to a detailed itemization of the proof relied upon in order to reach that result. We conclude that the finding and report in each case are sufficient."

In regard to the *V-R Ranch* case report [R. 9-53], the adequacy of which the Government again seeks to review, this Court said on page 460 (308 F. 2d):

"The issues are the same as those in Benning and Morrison and require the same disposition. Here, as in those cases and for the same reasons, the attack of the United States upon the adequacy of the commissions' report is without merit."

Thus, it is clear that the finding that the commission's report is adequate is the "law of the case" and equally binding on the court below as on this Court.

In *City of Seattle v. Puget Sound Power & Light Co.* (1926—9 Cir.), 15 F. 2d 794, the Court said at page 795:

> "[1] The rule is firmly established that the decision of the appellate court on appeal or writ of error is controlling upon the *court below* after the case has been remanded, and it is equally controlling upon the appellate court on a second appeal or writ of error in the same case. No doubt isolated cases may be found where appellate courts have disregarded the rule, and their power to do so is not questioned; but the overwhelming weight of authority is in its favor, unless between the two decisions there has been some change in the law, by legislative enactment or *judicial decision which the appellate court is bound to follow.* The rule itself has been iterated and reiterated by the Supreme Court and by this court. * * *" (italics added).

In *General American Life Ins. Co. v. Anderson* (1946—9 Cir.), 156 F. 2d 615, at 618, the court said:

> "This rule of 'the law of the case', is a salutory rule, necessary as a matter of policy in order to end litigation. It is based upon the ground that there would be no end to a suit if every obstinant litigant could by repeated appeals compel a court to listen to criticisms on their opinions, or speculate on changes of its members. *Roberts v. Cooper,* 20 How. 467, 481, 15 L. Ed. 969; and it would be impossible for an appellate court to perform

> its duties satisfactorily and efficiently if a question once considered and decided by it were to be litigated anew in the same case upon any and every subsequent appeal. * * *"

After admitting that the appellate court had the abstract power upon a second review to reach a result inconsistent with its decision on the first review of the same case the court in *Anderson* stated, quoting from *Chesapeake & Ohio Ry. Co. v. McKell* (6 Cir.), 204 Fed. 514, 516 (page 619, first column):

> "* * * but this is a power to be exercised very sparingly, and only under extraordinary conditions. The practice that such a decision be treated as law of the case, to be followed by the appellate court itself as well as by the trial court, is most salutary and its violation (save in rare exceptions) would intolerably unsettle all litigation. The power of an appellate court to review questions involved in a former decision and reach a different result may not be exercised except in a very clear case."

In *Wyant v. U. S. Fidelity & Guaranty Co.* (1940—4 Cir.), 116 F. 2d 83, the court said on page 85:

> "Of course the matters settled on the second appeal in this case cannot be reopened on this appeal."

See also *Hildreth v. Union News Co.* (1963—6 Cir.), 315 F. 2d 548.

The Government seeks to justify the re-examination of the issue of the adequacy of the report herein on two grounds: first, that the Supreme Court has granted certiorari in two cases "relating to this situa-

tion", and, second, that "evidence is now available for this Court so that the inadequacies of the reports now become clear" (Govt. Br. p. 23). We will answer these contentions separately.

On the first contention, it seems clear that there has been no "change in the law, by legislative enactment or *judicial decision which the appellate court is bound to follow*" (italics added), which the *City of Seattle* case, *supra,* stated was the only justification for disregarding the rule of the law of the case, nor does the reason advanced by the Government amount to the "extraordinary conditions" referred to in the *General American Life Ins. Co.* case, *supra.*

The granting of certiorari by the Supreme Court in the two cases, which the Government describes as "relating to this situation" does not justify a re-examination of the adequacy of the report.

Concerning the cases "relating to this situation" upon which the Supreme Court has granted certiorari, the case of *United States v. Merz* (1962—10 Cir.), 306 F. 2d 39, involved condemnation of clearance easements for airplane approaches. The parties stipulated to the highest and best use. The commission report cited the order of reference and contained ultimate findings only as to amount. The United States objected to the adequacy of the report *but made no request for specific findings.* A supplementary report which included findings of fact was filed, and this subsequent report made findings as to the height of the clearance easements over each tract together with findings of highest and best use for agricultural purposes, and concluded with findings on just compensation. The 10th Circuit Court of Appeals held the subsequent report was adequate

and that more specific findings would be of no help and that the supplemental report was entirely adequate to permit the court to review the uncomplicated issues and that the report was not clearly erroneous. The Supreme Court granted certiorari.

It can be seen that the report in the *Merz* case differs entirely from the report herein, and the fact that the Supreme Court has granted certiorari therein has no application to the instant situation, and the granting of certiorari therein creates no "change in law".

In the second case referred to by the Government (Govt. Br. p. 16) *United States v. 2872.88 Acres* (1962—5 Cir.), 310 F. 2d 775, all the report there did was to *recite* the substance of the valuation testimony given by the witnesses, and make ultimate findings of market value and severance damages, and the only specific findings were as to value of easements and fences taken, or the costs of fencing the remaining tracts (310 F. 2d 777). Thus it is clear that what the court stated, as cited on pages 22 to 23 of the Government's Brief, was directed toward *that* report and cannot apply to the detailed specific findings in the report in the instant case. The *2872.88 Acres* case cited *United States v. Lewis* (1960—9 Cir.), 308 F. 2d 453, with approval and stated at page 779 (310 F. 2d):

> "We do not say that every contested issue raised in the record before the commission must be resolved by separate findings of fact. We do say, however, that there must be sufficient findings of subsidiary facts so as it will appear to the reviewing court that the ultimate finding of value was soundly and legally based."

This Court in *Lewis* has already held that the subsidiary findings are sufficient, and we do not believe this matter is properly open to re-examination.

So far as the second alleged reason for a re-examination of this Court's decision on the adequacy of the report, *i.e.*, that the evidence is now available for this Court so that the inadequacies of the reports "are now clear", we will discuss the contentions of the Government hereafter in answer to the Government's Arguments III and IV. This second alleged reason is clearly directed at the question of the sufficiency of the *evidence* to support the subsidiary findings, and not at the sufficiency of the subsidiary findings to support the award. The two questions are quite separate. This Court has already held that the reports are adequate as clearly and unequivocally as it is possible to do so. The Government by declining to file the transcript on the first appeal represented to this Court that examination of the evidence was unnecessary for this purpose. It is illogical for the Government to say, as they did on the first appeal, that this Court must determine the adequacy of these reports from the reports themselves, but having determined that they are adequate, this Court must now review the evidence to see if they are inadequate.

But again we wish to state that we feel strongly that it is the action of the District Court in resolving the issues presented by the *objections* to the report that this Court should review, and not the report in light of the entire evidence as the government contends. This Court stated in *Lewis* on the previous appeal when the Government appeared to urge upon this Court a sort of supervisory function in the abstract:

> "This course we reject. If there be inadequacies in a particular report, they must be *specified* by objection to the report. If any case is to be remanded for correction of error in this area, it must be with instructions that by report or finding resolution of some *specific dispute* be made on some *specific inadequacy* be remedied. Otherwise, as we view the matter, there could be no end to these litigations." (308 F. 2d 456; italics added).

The issues raised by the objections heretofore filed [R. 62-76] were resolved by the District Judge, on review of the transcript, after oral and written argument, and the Government on this appeal, improperly we believe, has not seen fit to bring up for the examination of this Court the transcript of this hearing, nor to discuss in their brief the objections heretofore filed and argued with the transcript of testimony taken before the Commission. In addition to *extensive* oral argument on the objections, the Government filed a partial memorandum in support of objections 6 [R. 63], 7 [R. 63-67], 8 [R. 64] and 12 [R. 65-66], to which we responded in writing, and we attach as Appendix "D" to this brief appellees' written response thereto.

In its brief (page 5), the Government states, regarding these hearings before the District Judge, "There was no discussion by the court of the issues raised in any of these cases." It is true that the District Judge did not issue a written opinion, but there was a great deal of discussion of the objections raised, the exhibits introduced before the commission at both hear-

ings, the first without and the second with the transcript, which indicate a very careful consideration of each objection, and yet the Government is expecting this Court to "review the District Judge not the commission" without bringing the transcripts of these hearings to this Court for review. The Government has utterly failed in showing that the District Judge erred in carrying out his function "to review the commissions' report and findings *in light of the objections made to it* and to resolve the issues presented by *such* objections." As we will develop later in this brief, the issues raised on this appeal were not even presented to the District Court. How can the District Court be said to have erred in the resolution of issues not even presented to it for resolution?

ARGUMENT II.

Answer to Government's Argument III That Resort to the Record Shows That the Findings Are Clearly Erroneous.

Before discussing the Government's arguments in detail we would like to set forth our understanding of the issues properly before this court on this appeal. We repeat that this Court reviews the *district judge* and not the commission. Therefore, as we see it, issues *not* presented to the district judge for resolution and not passed upon by him are not properly before this court for review. The Government asks this Court to review the entire transcript to determine whether the report is "clearly erroneous". We believe that clearly, under the rules, the Appellant has the burden to show the *district court* that the commissions' report was "clearly erroneous", and to specify to this Court wherein the district court erred in carrying out its function to review the commissions' report and findings *in light of the objections made to it,* and to resolve *the issues* presented by *such objections.*

In its Argument III the Government relies on three contentions: (A) The findings of a highest and best use at the date of taking for residential subdivision use are clearly erroneous (Govt. Br. pp. 31-40); (B) That the commission "rejected" the sales relied on by the Government and that such rejection was unjustified (Govt. Br. pp. 40-43); and (C) The sales relied on by the commission were not of comparable properties (Govt. Br. pp. 43-46).

With the possible exception of contention IIIA, these contentions were *not* within the issues presented to the district judge by the objections to the report. Clearly

contention IIIB, regarding the commissions' alleged rejection of the Government sales, and contention IIIC, that the sales relied on by the commission were not of comparable properties are not by any stretch of the imagination within the objections presented to the district court. Examination of the objections [R. 62-77] shows this to be true, and we request that the Government point to the objection or objections which raised the issues set forth in contentions IIIB and IIIC before the district judge. It cannot be done.

A. Answer to Government's Argument IIIA That Findings of Highest and Best Use for Residential Subdivision Are Clearly Erroneous.

With regard to the Argument IIIA (Govt. Br. pp. 30-40), that the findings of highest and best use for residential subdivision are "clearly erroneous", the only objection that even remotely raised such issue to the district judge is the objection 22 [R. 71] to the effect:

> "22. There is no evidence in the proceedings, other than the *bare opinion* of the defendant's witnesses to support the finding set forth in Finding No. 18 of said report on page 27, lines 22-24, that "321.03 acres, referred to hereinabove as Classification No. 1 of the larger parcel, had a highest and best use for the development and for use as a residential subdivision." (italics added).

This objection 22 was fully argued before the district judge. The objection was, as can be seen, not that such finding was "clearly erroneous" for the reasons now advanced on this appeal, but that there was "no evidence in the proceedings, other than the *bare opinion* of defendants' witnesses" to support Finding 18(a) R. 43 [See Objection 22—R. 71].

It was pointed out that highest and best use is of necessity an opinion of well qualified persons. That it was not a "bare" opinion (by which we must assume an opinion without any reasons to support it) is shown by the detailed reasons and facts given in support thereof. For example see testimony of Jerry Carll, Sr. [Deft. Ex. "3F"—Appendix "B" to this Brief—Tr. 1684] and his detailed testimony [Tr. 1687-1689]. Furthermore the 321.03 acres in question is fully described under classification 1 as follows:

> "(a) Classification No. 1. That an area comprising approximately 321.03 acres consists mostly of gentle sloping, rolling land, including 214.82 acres lying to the east of Coyote Creek and 106.21 acres of land lying to the west of said Coyote Creek, a natural water course, and that this area contained a scattering of large live oak trees; that most of the area had been cleared of native vegetation prior to the take, and much of this area had been used for permanent pasture when the property was operated as a balanced unit for agricultural products and a dairy, cattle and dude ranch prior to the take. The portion east of Coyote Creek had elevations of approximately 475 feet at the lowest point to approximately 725 feet at the highest point. [393]
>
> That lying between the two areas heretofore discussed was an existing lake or reservoir referred to as "Deep Cat Lake" with a surface elevation of approximately 491 feet, an area of 17.27 acres, and capable of storing as of the dae of take approximately 338 acre feet of water. That said lake or reservoir is formed by a dam built in 1951.

> That as of the date of take herein, the owner of the subject property had a valid and existing permit from the State of California Department of Public Works, Division of Water Resources, for the appropriation of 418 acre feet per annum from Coyote Creek to be collected between November 1 and June 30, the storage to be effected by means of said earth filled dam 555.5 feet high by 366 feet long. That said dam and reservoir included the necessary appurtenances, such as tower pump, house, equipment, and so forth, for the distribution and utilization of water stored for us upon the property.
>
> Appurtenant to said Deep Cat Lake is an easement to impound waters upon the "Fowler" property. That said easement has no value in and of itself, separate and apart from the value of said Deep Cat Lake."

It was likewise pointed out to the district judge that the commissioners had fully viewed the property, seen detailed photographs and maps, and had made findings regarding the economic background, history, population growth, environmental factors [Finding 5—R. 13-20], the climate [Finding 9—R. 23-24], the water resources available [R. 30-32], etc. etc. All the foregoing findings contain facts (undisputed on this appeal) which indicated that the property was ideally suited for residential subdivision uses.

Furthermore the Government's own witnesses recognized the residential subdivision potentialities of the *V-R Ranch* properties. Mr. Evans, whose opinion of highest and best use was a stock ranch, a dude ranch

or to divide the property into smaller ranches [Tr. 2159-2160] or use part as a golf course [Tr. 2162, line 10] or could physically cut into 1 to 1½ acre lots and sell quite a few [Tr. 2162] or to subdivide into smaller estates, with dairy ranch "or what have you." [Tr. 2407, line 20, to 2408, line 7].

Mr. Sando had a highest and best use opinion of V-R Ranch as a cattle ranch in the main sense with the potential subdivision of a small part of it [Tr. 3545, lines 7-22], 20 acres at a time [See also Tr. 3778, line 3 *et seq.*]

In addition to the opinions and reasons therefor stated by well qualified appraisers [their qualifications are in evidence by stipulation in defendant's Ex. "U", Tr. 61], 250 of the 321 acres in question had already, prior to the taking been approved for subdivision [see Deft. Ex. "L", Approved Tentative Subdivision Map dated April 1, 1956—in evidence by stipulation Tr. 41]. So it is clear that on the limited issue raised below that there was no evidence other than the "bare" opinions of defendants' witnesses the district judge did not err in refusing to find that this finding was "clearly erroneous". Indeed, had the district judge so found he would have abused his discretion. See for example the testimony of Jerry B. Carll, Sr., Tr. 1687 to 1689.

We now turn to answering Appellant's Argument III on the merits, without prejudice to our position that these issues are *not* properly before within the scope of this Court's review. On page 30 of its brief the Government states, "The comparable sales are given by the reports as the only basis for the commissions'

conclusions." This just is not so. In addition to detailed and meticulous findings which this Court held adequate on the previous appeal, the commission found:

> "The undersigned Commissioners having heard the testimony, both oral and documentary, presented by plaintiff and defendant, and being fully advised in the premises and having duly considered all of the evidence and testimony presented herein for and on behalf of plaintiff and defendant, *and having viewed the property,* and property alleged by the parties to be comparable to the subject property, and having examined and studied in detail all exhibits introduced in evidence by plaintiff and defendant, and having considered in [382] detail legal authorities and arguments of counsel, the undersigned Commissioners hereby make their report and findings as hereinafter set forth." (italics added).

On page 32 of its brief, the Government says: "The error was in the area they believed to be comparable", and on page 33 that they are not objecting to the exercise of the trier's discretion as to consideration of particular sales deemed to be dissimilar, but "It is rejection of all of the 28 sales relied upon by the Government".

The commission did *not* reject all 28 sales relied upon by the Government. We will answer this unwarranted assumption made by the Government hereafter under our answer to the Government's Argument IIIB.

In its Argument IIIA (2), pages 33-36 of its brief, the Government *assumes* directly contrary to the report

that the commission valued the property as if the property were not being used for its highest and best uses found, and not to the extent that the potentiality for such use affects the present market value. But this assumption has no support in the record and is completely unjustified.

It is perfectly clear from the record that the commission did not value the V-R Ranch Company property as if the property were *now* being used for the highest and best uses found. Since the Government took possession of V-R Ranch in August, 1957, and since the matter was not tried until 1960, the ranch was not in operation, as such, at the trial. With regard to its *Classification No. 1*—321.03 acres, the commission found, among other things:

> "* * * that most of the area had been cleared of native vegetation prior to the take, and much of this area had been used for permanent pasture when *the property was operated as a balanced unit for agricultural products and a dairy, cattle and dude ranch prior to the take.* * * *" [R. 25; italics added].

This court stated on the previous appeal:

> "The highest and best use is not found from the past history or present use of these lands but *from reasonable future probability* in light of the history of the region in general in its transition from agricultural to residential character." (*United States v. Lewis,* 308 F. 2d 461; italics added).

That the commission, in finding highest and best use for various portions of V-R Ranch, was concerned likewise with reasonable future *probability* is clear from

the detailed and meticulous findings regarding the economy, history and growth in the area [Finding 5—R. 13-20].

Furthermore, in its finding of highest and best use of the area described as Classification No. 1 [321.03 acres, described—R. 25], the commission found this 321.03 acres "had a highest and best use *for the development* and for use as a residential subdivision" [R. 43; italics added]. On highest and best use for its Classification No. 2 [154.26 acres described in Finding 10(b)—R. 26], it was found to be "for *development* as rural homesites" [R. 43; italics added]. The same is true of its Classification No. 3 [38.52 acres described in (c) R. 26] where the highest and best use was found to be "for *development* for view type country estate or estates" [R. 43; italics added]. Also its Classification No. 5 [67.60 acres described in (e) R. 27], the 16.50 acres referred to as "Proposed Lake No. 2" was found to have a highest and best use "for *development* of a storage reservoir, and the balance for *use* as cabin *sites* and the 9.70 acres of creek bottom lands "for *developing* a water supply by building of a dam at the Dunshee Narrows or for cabin sites" [R. 44; italics added].

Thus it is clear by the use of the words "for *development*", implying probability of future use, that the commission did *not,* as the Government unsupportedly *assumes* it did, value the property as if it were now used for such purposes. On the contrary, this is what the commission did *not* do, but it found that the property was reasonably adaptable for development to such uses, and specifically found:

> "20 The Commissioners find that as of August 12, 1957, there were willing buyers in the open market for lands which were reasonably adaptable to all the uses which the evidence of both plaintiff and defendant showed that the lands in the subject property were reasonably adaptable and capable of being used as of said date." [R. 48].

The commission also found in Finding 6 [R. 20] that there were buyers in the open market seeking to acquire lands of the character of said parcel "for development and use" and that:

> "* * * said buyers were acquiring similar or comparable properties for both immediate development and use and also for future development and use."

Furthermore, after finding in detail the water resources available to the *V-R Ranch* property in its Finding No. 11 [R. 30-32], the commission specifically found that:

> "* * * the aforesaid water resources, assuming maximum development as afore said, provides for the *development* of said property to the uses and purposes hereinafter in these findings set forth." [R. 32; italics added].

These few references to *development*—there are many more—make it abundantly clear that the commission did not value the property "as if it were *now* used for such purposes" (Govt. Br. p. 33).

The Government, in its brief (p. 36), states that:

> "The reports are, thus, explicit that the commissions have used the forbidden process by treating the lands as if they had been subdivided into the various segments described in the findings."

The Government cites for this proposition the fact that the commission found the highest and best use for certain classifications of land and incorrectly cites V-R Ranch, R. 47-48.—[the correct citation being Finding 18, R. 43-45 and Finding 19 R. 45-46.] Actually the commission, in the *V-R Ranch* case, described 13 classifications of land relating to "the area, topography, terrain, vegetation and improvements * * *" [see Finding 10 — R. 24-30], and since the various types of land had various and different uses, including their highest and best use, the commission found the highest and best use for each of these 13 classifications, both before and after the taking [R. 43-46], and specifically found:

> "In arriving at the market value immediately before the taking of the entire parcel of which the portion taken was a part, the Commissioners considered the said larger parcel as a single unit in light of its highest and best use, and also took into consideration all of the uses to which said larger parcel was reasonably adapted at the time of said taking and for which it was reasonably capable of being used as of said date.
>
> "In arriving at the fair market value immediately following the taking of the remainder of the parcel not taken, the Commissioners took into consideration the then highest and best use of the remainder and also took into consideration all of the uses to which said remaining property was reasonably adapted immediately following the taking and for which said remainder was reasonably capable of being used immediately following the taking." [R. 47-48].

Thus it is clear beyond question that the commission did *not* treat the lands "as if they had been subdivided in the various segments described in the findings" as the Government contends that it did.

All of the witnesses, including the Government witnesses, agreed that the different parts and types of land had different uses and values as part of the whole, and each of the witnesses divided the *V-R Ranch* property into various classifications and uses: [see for example, Deft. Ex. 3F (Appendix "B") Jerry B. Carll, Sr., Valuation Chart—Tr. 1684, and compare with Pltf. Ex. 8—Bernard G. Evans, Valuation Chart—Tr. 2369].

In its brief (p. 37), the Government, under the heading "4. Facts appearing in the reports controvert the conclusions as to highest and best use", makes this statement: "But the commissions did not even assert the actual existence of a demand for such properties in the Casitas Valley". Despite the fact that this statement is in direct conflict with the statement found on page 39 of its brief, "It must be remembered that the commissions found that a demand existed to create this magic city * * *", we will answer this statement that the commission did not even assert the actual existence of a demand for such properties in the Casitas Valley by referring directly to the report itself. In the first place, the *V-R Ranch* report, finding detailed *facts* relating to the economy, history, and growth of the area, including the *immediate environs* of said property, finds categorically and unequivocally as follows:

> "Properties in Ventura County and in the area of CR 17 were at the time of the take *greatly in demand* because, among other things, a large

number of people of retired status were seeking country life on either residential subdivisions, or country estates, or rural ranches, or estates with or without avocado, citrus and deciduous trees either in family orchard size or in [387] small or large commercial developments. * * *.

"That with respect to the lands within the Santa Ana and Coyote Valleys and immediate surrounding areas, many of said properties were in the transition stage from dry farming and more intensive agriculture, to development for small rural estates and residential subdivisions."

"As of the date of the taking, dry-farmed lands within the area varied widely in price up to a maximum of $1,000 an acre, with values often having little relationship to agricultural potentialities and prices paid for such lands in the area of said parcels were influenced more by climatic and geographical factors than by soil, topographic and drainage limitations and net farm income.

"The fair market value of lands suitable for the growing of avocados and citrus crops within Ventura County where the land had water immediately available, varied between $1,600 and $3,750 per acre.

"There are few areas in as close proximity to the metropolitan areas of Southern California having as desirable a climate, scenic attributes and general cultural environment as the subject parcel had.

"6. *The Commissioners find that as of the date of the take there were buyers in the open market seeking to acquire lands of the character of said parcel for development and use* and that these

buyers were, at the date of the taking, actually acquiring lands similar in type and character to the subject parcel, in other areas such as the Conejo and Thousand Oaks areas for the same or [389] similar uses and purposes and that said buyers were acquiring similar and comparable properties for both immediate development and use and also for future development and use.

"7. The Commissioners find that the buyers in these other areas were acquiring lands for similar and comparable uses in areas having a climate, scenic beauty, water supply and general environment less favorable than that of the subject parcel." [R. 18-21—italics added.]

In the face of these specific findings, sustained by the overwhelming weight of testimony, it is difficult to conceive how the Government can blandly assert that the reports do not contain subsidiary findings setting forth facts from which a reviewer can weigh the validity of the conclusion as to highest and best use, or that the commission did not even assert the actual existence of a demand for such properties in the Casitas Valley.

Returning to a consideration of the Government's brief, we find that on pages 37-38, the Government quotes (out of context) that portion of finding 5 [R. 13-20] reading:

"That with respect to the lands within said Santa Ana and Coyote Valleys and immediately surrounding areas, many of said properties were in the transition stage from dry farming and more intensive agriculture, to development for small rural estates and residential subdivisions." (Govt. Br. pp. 37-38).

The Government then states on page 38 of its brief that this "precludes valuation of the lands as hypothetically subdivided at the date of taking, since it recognizes the fact that the alleged transition stage had not been completed." This is complete nonsense—if the transition stage had been completed, the properties would not be in transition. In the first place, as we stated earlier in this brief, the commission did not value the lands as hypothetically subdivided at the date of taking. In the second place, the Government's reference to "alleged transition" seems to infer that it questions the validity of this finding that "many of said properties were in a transition stage from dry farming and more intensive agriculture, to development for small rural estates and residential subdivisions" [R. 19].

The finding is taken from page 77 of one of the Government's own official documents ["Dunshee" Ex. "AA" in evidence by reference on Defts. Ex. "Y", the list of Exhibits from "Dunshee" cases stipulated in evidence, Tr. 71]. This is referred to as House Document No. 222, being a report of the Regional Director, Bureau of Reclamation, and is in evidence by stipulation. The finding referred to does not say all of the properties within the Santa Ana and Coyote Valleys were in the transition stage, but that "*many* of said properties were * * *". In addition to Dunshee Exhibit "Y", above referred to, the map showing "Subdivided Residential Areas" [Dunshee Ex. "V" in evidence by reference on Deft. Ex. "Y"—Tr. 71] shows that the finding is supported fully by the evidence.

In addition to the statement on page 77 of said House Document 222, the commission viewed the entire area and subject parcel on July 26 and 27, 1960 [See

Tr. 75-173] and also viewed the area in connection with CR 19 (Dunshee parcel) for four days, including *all* the sales, under a stipulation that said view would apply also to *V-R Ranch* case [*Benning,* Tr. p. 9, lines 15-24].

The Government quotes, pages 38-39 of its brief, from the *Battin* record, and not having this record or transcript we can only answer by referring to the *V-R Ranch* case. So far as the highest and best use for residential subdivision, we respectfully refer this Court to the finding that the 321.03 acres in Classification No. 1 had a highest and best use for the development and use as a residential subdivision [R. 43—Finding 18a]. This area is described by the commission in its report, which description we have quoted in full on pages 33 and 34 of this brief, and to which we refer this Court without repeating that description.

This finding is unchallenged, and describes land admirably suited for residential subdivision development.

Furthermore, all of the landowners' expert witnesses testified this portion of the property had a highest and best use as for development to residential subdivision and gave detailed reasons for that opinion. See witness Jerry B. Carll, Sr., for example—Tr. 1687 to 1689, and Ex. "3F" [Tr. 1684 — Appendix "B" to this brief]. See also Defendants Exhibit "L", tentative subdivision approval April, 1956—[in evidence by stipulation—Tr. 41] and Defendant's Exhibit "Q" — Estimate of Subdivision Costs [Tr. 54].

In addition to the foregoing, a tentative subdivision map on a portion (250 acres) of Classification No. 1 had already been approved by the Ventura Planning Commission in April, 1956—over a year prior to the

take—[see Deft. Ex. "L"—Tr. 41, consisting of an approved tentative subdivision map of El Rancho Cola—unit No. 1 (133 lots)—scale 1″ to 200′—Engineer Ralph B. Nunnelley—R. E. No. 8080 dated April, 1956—approximately 250 acres in Unit No. 1—Also shows projected subdivision Unit No. 2 (147 lots)—club house—chalet development—cabana and swimming pool, etc.—attached thereto is a copy of memo from Secretary of Ventura County Planning Commission to Board of Supervisors (6/12/56); and copy of resolution No. 826 of Planning Commission entitled "Conditional Approval of Tentative Map of El Rancho Cola—Unit No. Subdivision and Stating Conditions of Said Approval in Accordance with Ventura County Ordinance Code"].

Mr. Ralph B. Nunnelley, President of V-R Ranch Company, and a licensed civil engineer, with a vast experience in engineering specializing in subdivision work [see his qualifications set forth in Deft. Ex. "U"—Tr. 61] testified at length regarding the *reasons* why this land had subdivision potentialities [See for example, Tr. 745, line 20, to 746, line 17; see also Tr. 739, line 13, to 745].

The Government witnesses testified that this property was physically capable of development to residential subdivision use but in their opinion had a highest and best use as ranch land because, among other reasons, they *assumed* that it did not have sufficient water resources available to develop it to residential subdivision use [see for example, *Sando* Tr. 3530, lines 21-25].

The commission after extensive water testimony found that this assumption upon which the Government appraisers predicated both highest and best use opinions and values, was not true and found sufficient water for

all the uses and purposes to which they found the property adaptable [see Finding 11, R. 30-33]. The issue regarding the water resources available to *V-R Ranch* property was one of the pivotal points of the entire case and covered 2429 pages of testimony. We attach as Appendix "E" a summary of the transcript dealing with water testimony alone. These exhibits dealing directly with the water resources available to the *V-R Ranch* property are in numbers as follows:

Plaintiff's water exhibits consisted of 54 out of their total of 61 exhibits.

Defendants' water exhibits consisted of 45 out of a total of 85 exhibits.

We have listed these exhibits dealing solely with the issue of water resources in Appendix "F" to this brief.

Yet the Government completely ignores this important issue and vast amount of testimony with the single statement, the only reference in its entire brief to the water resources, as follows:

> "Also, findings were made at some length concerning the water facilities available." (Govt. Br. p. 7).

In connection with this point that the commission is supposed to have valued the *V-R Ranch* property as if it were now being used for the highest and best use found the Government states in its Specification of Error No. 7(d):

> "the records show that the commissions were valuing on the basis as if the property were now used for the potential highest and best use;" (Govt. Br. p. 15).

Not only is this a completely untrue statement, as we have pointed out above, but it was *not* one of the objections made to the report and hence not an issue resolved by the district judge. We do not know what "records" the Government is talking about—not it is clear, the V-R record—[see Govt. Objections, R. 62-76] —nor the *V-R* case transcript which the Government does not even deign to refer to. The award alone shows this statement to be not true, being as it is more than $850,000 *below* the low opinion of the landowners' appraisers.

B. Answer to Government's Unwarranted Assumption in Its Argument IIIB That the Commission "Rejected" the Sales Relied Upon by the Government.

In that portion of its brief under Argument IIIB (pp. 40-43) the Government's entire argument is premised upon an assumption not borne out by the record, *i.e.,* that the commission "rejected the sales relied upon by the Government." This assumption is not true. The basis for this alleged error is Government's Specification of Error 7(a) that among the five reasons why the Government feels the commissions' reports are erroneous is:

> "(a) Adequate reason for rejection of sales in the immediate vicinity was not given."

This assumption is not a sound one and is not borne out by the record, but before discussing it, we wish to point out that this contention that the commission "rejected" any group of sales and "accepted" another group, is brought into this case *for the first time* on this appeal. It was not a contention raised before the district court on any of the Government's objections to the *V-R case* report. The *only* one of the 34 objec-

tions raised below, that dealt in any way at all with sales, or commissions' use thereof, was objection No. 10 [R. 64-65] regarding the objection to the commissions' finding that there were very few sales of comparable properties in the immediate area. We have already discussed this objection 10 under our comments regarding Specification of Error No. 12, on pages 19 to 22 of this brief and will not repeat what we said herein. In the first part of its brief the Government asserts that the landowners' witnesses ignored all the sales the government witnesses relied on (Govt. Br. p. 11) and we pointed out that of the 34 sales used by the Government witnesses no less than 15 were the same sales as relied upon by the landowners' witnesses, and now, also without foundation, the Government says the Commission "rejected" the Government sales. On the contrary the report states that the awards are sustained by a fair proportion of *all* the evidence: "including evidence obtained by the Commission on its view of the premises, the surrounding area, and the alleged comparable properties to which the attention of the Commissioners was directed by the parties." [R. 48-49].

What the Government is saying, in effect, is that the report is clearly erroneous because the commission did not accept in its entirety the Government witnesses' opinions and evaluations of these sales and reject in its entirety the reasoning and analysis of the landowners' appraisers—which reasoning and evaluation the Government does not even call to this Court's attention. Obviously whether one property is or is not "comparable" to another depends on many factors—the respective location—size—topography—climate—

water resources, etc. etc., of the two properties, which factors cannot be evaluated without seeing the two properties (as the Commission did), examining all the photographs, topographic maps, reviewing what each witness explained about its similarities and differences —its topography—water resources, etc. etc. Indeed the government appraiser Mr. Sando in discussing his summary—Classifications of Acreage Sales [Pltfs. Ex. 47, Appendix "A" to this brief, Tr. 3572] stated on page 3576, lines 18 to 24 of the transcript:

> "In comparing these sales to the subject properties I have considered the various differences that influence the value, such as the size, the availability of water, adaptability of soil, adaptability for rural residential, the topography, location, shape, so forth, plus the important elements of time which I made adjustments for as shown on this tabulation."

If as the Government *now,* for the first time on this appeal, says the commission "rejected" the sales relied upon by the Government witnesses, the commission must of necessity "rejected" 15 of the landowners' sales that are duplicates of the Government sales. Such contention is untenable. As stated previously the *V-R Ranch* expert witnesses opinions of just compensation ranged from a high of $2,322,000.00 to a low of $2,016,475 and the government witnesses from $598,-000.00 to $588,250.00. The award of $1,163,400.00 [R. 51] is thus, taking only the *low* opinions, $853,-075.00 *below* the landowners' witnesses low opinion and only $575,150.00 *above* the government witnesses low opinion. Not only is the award, as finally approved by the Court and merged into the judgment, ade-

quately sustained by the evidence in respect to amount and therefore not subject to attack for excessiveness but it (the award) clearly demonstrates that the commission did *not* "reject" one group of sales (the Government's) and "accept" another group (the landowners') because had this occurred the award would have been about two million dollars and not over $850,000.00 below that figure.

C. **Answer to Government's Contention IIIC That the Sales Relied Upon by the Commissions Were Not of Comparable Properties.**

Like the *assumption* that the commission "rejected" all the Government sales, this is based on the equally unwarranted assumption that the commission relied on one particular group of sales. The Government is again talking about the so-called "Conejo" sales which we have already discussed earlier in this brief. This argument is premised upon Government Specification of Error No. 7(b) that the commissions reports are clearly erroneous because, among other things, "(b) the sales relied upon by the Commissions were plainy irrelevant and noncomparable;" (Govt. Br. p. 15). Aside from the unwarranted assumption that the commission "relied" upon the "Conejo" sales only, this objection comes too late; the time to raise the issue of irrelevance and noncomparability of sales was in the hearing below when the particular sales to which the Government *now* objects were offered in evidence. All of the sales in the *V-R* case were entered in evidence *by stipulation* [see Pltf. Ex. 3—Tr. 2128; and Defts. Ex. "V"—Tr. 66]. Each sale was examined physically by the commission, and each sale offered by both sides were fully described by the witnesses. Photographs and topographic maps

accompanied each sheet covering all the sales data. The Government attorney trying the case before the commission had the right and the duty *at the time the sales were offered in evidence* to object that no foundation showing comparability was laid, and to object to the introduction of any sale offered on the ground that it was "irrelevant and noncomparable." This was not done. Had the Government attorney made his objection to the introduction of any sale and had the commission overruled such objection, the government trial attorney could have sought and received a ruling on this issue by the district judge. This applies not only to the so-called "Conjeo" sales to which the Government *now* objects, but to all the sales. The objection is too late. It is unconceivable that the Government at this stage only, should contend that any sales, which were introduced into evidence without objection and *by stipulation,* are plainly "irrelevant and noncomparable." If the Government felt that any sale offered in evidence was "plainly irrelevant and noncomparable", the Government attorney had the duty to make timely objections *at the time the sales data was offered in evidence,* and secure a ruling thereon. Only then could the relevancy and comparability of such sale, or sales be properly reviewed by this Court.

In *United States v. 18.46 Acres*—Vermont (1963 2 Cir.) 312 F. 2d 287, the Government alleged error in the *exclusion* of testimony as to comparable sales where witnesses were excluded from stating the price of such sales on the ground, of the objection made, that such testimony was *hearsay.* This ruling was held to be error and when the appellee sought to sustain the ruling on the ground that the admission of such testimony is a matter within the judge's discretion, the

appellate court held that the testimony was excluded on the ground of hearsay and not in the exercise of its discretion stating on page 288 (213 F. 2d):

> [4] What has been said also disposes of appellees' second ground of sustaining the ruling, namely, that the government had not laid a foundation for the experts testimony by showing that the sales were comparable. *This was not the objection made at trial, and was not the basis of the judges ruling.* Had an objection been made on that score, the Government might well have cured it, and in any event we think a prima facie showing of comparability was made; *any attack upon it should have developed upon cross-examination . . .*" (Italics added).

In the instant case, not only was no objection made to the introduction of any sale, but a full and complete foundation was laid for each sale, and the Government cannot now object that any sale or sales was or were "irrelevant and noncomparable."

The Government's *present* complaint that the Commissions made no attempt to show that economically the Santa Ana and Coyote Valley were comparable to the Conejo area is likewise untenable. We believe that Finding 5 [R. 13-20] more than covers such objection. Finding 6 [R. 20] also covers such objection fully. Besides the commission specifically found that:

> ". . . Conejo Valley is and was a suitable area in which to find sales of property sufficiently alike to give *some reasonable index of value for use in determining the fair market value* of the en-

tire parcel of which the portion taken was a part and also to determine the value of CR 17 as a part of the whole parcel." [R. 48] (Italics added).

This finding was made after, as the commission expressed it:

". . . having heard the testimony, both oral and documentary, presented by plaintiff and defendant, and being fully advised in the premises and having duly considered *all* of the evidence and testimony presented herein for and on behalf of plaintiff and defendant, and *having viewed the property, and property alleged by the parties to be comparable to the subject property,* and having examined and studied in detail *all* of the exhibits introduced in evidence by plaintiff and defendant, and having considered in detail legal authorities and arguments of counsel . . ." [R. 11—Italics added].

This Court cannot, under the showing made by the Government, find that the report is erroneous on the contention that the "sales relied upon by the Commission were not of comparable properties." The Government's burden in showing that the report is "clearly erroneous" is particularly heavy when the commission has viewed and inspected the properties. In *United States v. Twin City Power Co. of Georgia* (1958 5th Cir.), 253 F. 2d 197, 203 the court stated:

"[2] It must be remembered that the 'clearly erroneous' burden, both under Rule 53(e) and Rule 52(a), is not a single definite and certain burden, but varies in accordance with the differing opportunities and presumably different of the several tribunals. Among other considerations, for example,

> *that burden is especially strong when the commission has viewed and inspected the properties,* or when credibility is questioned and the commission has had the opportunity to see and hear the witnesses. * * *" (Italics added.)

In the instant case, as stated previously herein, *all* the appraisers used the *now* objected to Conejo sales. It is true they differed as to their opinions of the degree of comparability from an economic point of view.

But the resolution of these differences of approach and evaluation, *i.e.,* "when credibility is questioned," is the province of the commission, and the commission having had the opportunity to see and hear the witnesses, the burden of showing that their decision is "clearly erroneous," is heavy. The Government has not even begun to carry this burden.

The rule is well stated in *Parks v. United States* (1961 5th Cir.), 293 F. 2d 482, 486, as follows:

> "Most important for purposes of review, the commissioners themselves went over the extensive ranch and viewed it, thus having the benefit of evidence which cannot be reproduced in the written record. We have carefully read and studied the record, *not for the purpose of usurping the functions of the commission or those of the district court in its primary review of the commissions' findings and award,* but for the purpose of determining whether the judgment of the district court has been shown to be erroneous and we cannot so find. See *United States v. Twin City Power Co. of Georgia,* supra." (Italics added.)

We believe that the Government in seeking to overthrow the judgment below on the ground that the "Sales

relied upon by the commissions were not comparable properties" (Govt. Br. p. 43 — Argument IIIC) is asking this court to usurp the functions of the commission. Even more clearly, since such issue was *not* raised before the district court [See Govt.'s Objections R. 62-76], this contention asks this Court to usurp the functions of the district court "in its primary function to review the commissions findings and award." What we have said regarding Specification of Error No. 12 (this brief) applies with equal force to this contention and while we refer to what we said there we will not repeat it.

D. Answer to Government's Argument IIID Regarding Award of Severance Damages in Battin Case.

The argument set forth in Argument IIID, pages 46-48 of the Government's Brief deals entirely with the alleged error in the award of severance damages in the *Battin* case, and having no connection with the *V-R Ranch* case we will not presume to answer it.

ARGUMENT III.

Answer to Government's Argument IV That Review of Entire Record Shows That the Judgments Are Unsupportable and Unfair to the Public.

In its Argument IV (Govt. Br. pp. 48-63) the Government contends that if this Court undertakes review of the entire records this Court will conclude that the amounts awarded exceed the fair market value. We do not believe that this Court should undertake to usurp the functions of the commission in this respect. Since this Court should review the district judge to see if *he* erred in carrying out his primary function to review the commissions' findings and award, and to see if he erred in resolving the *issues presented by such objections* (See *United States v. Lewis supra),* we do not believe this Court should go beyond the "objections heretofore filed" which are set forth in [R. 62-76]. Since *none* of the contentions made in its Argument IV were within the ambit of these objections, and since none of these present contentions were made to the district court in its "primary review of the commissions' findings and award." *(Parks v. United States, supra),* we do not believe they are properly before this court on this appeal. This is particularly true with regard to the Government's implied request in its Argument IV that this Court review the entire record to see if the awards *exceed* this Court's opinion of fair market value. We have already pointed out that the award in the *V-R Ranch* case is well within the opinions expressed by the expert witnesses, and therefore are as stated in *United States v. Waymire, supra,* "adequately sustained by evidence in respect to amount and therefore are not subject to attack for excessiveness."

Although we do not believe that the contentions made by the Government in its Argument IV are properly before this Court on this appeal, we will nonetheless briefly respond to these contentions, lest it be argued that by not responding we concede they have any merit. We do not believe they have.

On page 48 of its brief the Government makes this statement:

> "Indeed, all of this evidence was inadmissible because of the failure to lay a proper foundation."

This is so sweeping a statement that is meaningless. What is meant by all of *"this evidence?"* We do not feel that the Government has the right to complain on this appeal to the *admissibility* of any evidence to which a timely objection was not made upon its offer into evidence, and the admissibility of which was submitted to the district court. In our answer to the Government's Argument IIIC, regarding the contention that the sales relied upon by the Commissions were irrelevant and noncomparable, we have already set forth our position in full and respectfully refer this Court thereto. The Government cannot point to a single bit of evidence, oral or written, to which a timely objection was made, overruled by the commission, and such ruling submitted to the district court. In the absence of such a showing the admissibility of any evidence is not properly before this Court for review.

A. Answer to Government's Argument IVA (Govt. Br. pp. 48 to 57) That the Judgments Are Not Based on Evidence Indicating Fair Market Value.

In its Brief, page 48, the Government makes the flat statement that the commissions' findings represent the adoption by the commissions of the *theories* urged by the landowners, and with the exception of severance

damages, the awards are "fairly close" to the landowners claims. So far as the *V-R Ranch* is concerned we only wish this statement was true, but unfortunately, it is not. As we have pointed out previously the award of $1,163,400.00 [R. 51] is $1,158,600.00 *less* than our high opinion value of $2,322,000.00 and $853,000.00 less than our low opinion. We hardly think this is "fairly close" to the landowners' claims. The award on the contrary is much *closer* (by $593,200.00) to the high opinion of the government witnesses which was $598,000.00. If the term "fairly close" is applicable, it applies to the Government claims and not to those of the landowners. The Government made what were, in effect, the same contentions, *i.e.,* that commissions' findings represent the adoption by the commissions of the theories claimed by the landowners, when they argued on the previous appeal that the finding of the commission represented adoption *in toto,* except for the amounts awarded, of proposed findings submitted by the landowners. In our response to that contention we pointed out in detail in our answering brief that this just was not so. What we said there applies with equal cogency to the present contention that the commissions' "findings represent" the adoption by the commissions of the theories urged by the landowners." What we stated on pages 32-34 of our Answering Brief in the previous appeal is included in Appendix "C" to this brief.

Of course some of the landowners' "theories" were adopted—for example that the *V-R Ranch* had sufficient water resources to support a residential subdivision development on 321 acres and the other highest and best uses found for the other classifications. [See

Finding 11, R. 30-32; Finding 12, R. 32-33, Finding 13, R. 34-35], but these water findings are not under attack on this appeal.

On the patently untrue statement that the awards are *"fairly close"* to the landowners' claims, we respectfully point out that on, for example, the opinions of value of the part taken [CR. 17—826.06 Acres] including all the improvements, were as follows:

Landowners' Witnesses:		
Ralph B. Nunnelley	$1,919,000	[Deft. Ex. 2 "W," Tr. 765].
George S. Mann	$1,754,000	[Deft. Ex. 3 "D," Tr. 1265].
Jerry B. Carll, Sr.	$1,707,065	[Deft. Ex. 3 "F," Tr. 1684; see Appendix "B"].
Government Witnesses:		
Bernard G. Evans	$ 563,900	[Pltf. Ex. 8, Tr. 2369].
Laurence Sando	$ 587,000	[Pltf. Ex. 51, Tr. 3759].
Commissioners Award	$1,104,900.00	[R. 52].

Thus it can be seen that the award rather than being "fairly close" to the landowners' claims was $814,000.00 *less* than the landowners' high claim and only $517,-900.00 higher than high appraisal of the Government appraisers [see Pltf. Ex. 51—Tr. 3759]. Since the award is closer to the high appraisal of the Government by almost $300,000.00 than to the landowners' high appraisal, it is difficult to see how the Government can make the statement that the commission adopted the landowners' theories and that the awards are "fairly close" to the landowners' claims (Govt. Br. p. 48).

In view of the cold arithmetic of the matter, when the Government says in its brief that the commission rejected all the Government's sales, that the findings represent an adoption by the commission of the "theories"

urged by the landowners and that the awards are "fairly close" to the landowners' claims, we are inclined to wonder if the Government is talking about the same law suit we are. A brief comparison between Defendant's Exhibit "2W"—Ralph B. Nunnelley's Opinion Chart [Tr. 765] and Defendant's Exhibit "3D"—George S. Mann Opinion Chart [Tr. 1265] on the one hand and the 13 classifications of land [Finding 10—R. 24-30] and highest and best use [Finding 18—R. 43-45] found by the commission in its report, on the other hand, will show that it is *not* true that the "commissions' findings represent the adoption by the commission of the theories urged by the landowners." It is clear, however, that on the issue of the water resources available to *V-R Ranch* property the commission found in Finding 11 of the report [R. 30-32] sufficient water for the highest and best uses found and that this finding is contrary to the *assumption* upon which the Government appraisers based their opinions of highest and best use and value. These water findings are not under attack on this appeal. They alone are sufficient in themselves to account for the difference between the award and the value opinions expressed by the Government experts.

We are not in a position to respond to the Government's review of the *Battin* record set forth on pages 49 to 53 of its brief, and the *Banning* and *Dunshee* cases set forth on pages 53 to 55 of its brief because we do not have these records available. We would, however, like to call the Court's attention to the fact that the "Mr. Carll" referred to as testifying for the landowners in those cases is not the *Jerry B. Carll, Sr.*, who testified in the *V-R Ranch Co.* case. Mr. Jerry Carll, Sr., is the *son* of the Cloice Carll who testified

in the *Battin, Benning,* and *Dunshee* cases, and the qualifications, background, and investigation of Mr. Jerry B. Carll, Sr., is set forth in Defendant's Exhibit "U" [Tr. 61] as are the qualifications of the other witnesses who testified for V-R Ranch Company.

We do, however, wish to comment upon that portion of the Government's Argument IV A, set forth on pages 55 and 56 of its brief with regard to the testimony of Mr. Jerry B. Carll, Sr., and Mr. Sando.

As far as Mr. Jerry Carll, Sr., is concerned, the testimony cited on page 55 of the Government's brief is only a small portion of his testimony and taken out of context.

As far as the testimony of Mr. Sando, one of the Government's appraisers, is concerned, his low appraisal was based primarily on two *assumptions,* neither of which were accepted by the commission. These two assumptions were:

(1) that the *V-R Ranch* property did not have sufficient water resources available to it to support a subdivision development, and that it had only a "limited water supply" [Tr. 3530, lines 21-25].

The commission found there were sufficient water resources available to provide for development of the property to the uses and purposes set forth [Finding 11—R. 30-32], and that these uses included the highest and best use found for the 321.03 acres in Classification No. 1 "for the development and for use as a residential subdivision" [Finding 18a—R. 43].

(2) The second assumption made by Mr. Sando was that the area of the *V-R Ranch* property was not, *in his opinion,* economically ripe for subdivision [except

over a period of years in 20 acre increments—Tr. 3530]. Mr. Sando came to this conclusion by looking to the *past history,* and not the future probabilities, of the area. What he did was to take the 11 year period prior to the taking (*i.e.,* 1947 through 1957) where 20 acres per year had been subdivided and projecting this rate of growth into the period following the taking in 1957, came to the conclusion that it would take "many, many decades" for the area to develop. For example, he testified on page 3524, lines 1 to 4:

> "I found that in that entire area that in 11 years, 1947 through '57 that there had been approximately 200 acres subdivided which is an average of 18 acres per year, and that they averaged about 36 lots per year." Based on the foregoing reasoning, Mr. Sando concluded:
>
> "With a population of 15,000 people in the area, there will be many, many decades, and scores of years before a great deal of this land is absorbed into subdivision use." [Tr. 3530, lines 12-15].

And further stated:

> "I think some of the reasons for lack of subdivision use, while the land is physically useable for subdivision purposes, the lack of population, the lack of industry in the area and the limited water supply I think are contributing factors." [Tr. 3530, lines 21-25].

The commission, based on overwhelming evidence to the contrary, did not agree with his dismal view of future potential of the area [see Finding 5—R. 13-20]. They likewise did not agree with his concept of "limited water supply." [see Finding 11—R. 30-32; Finding 12—R. 32-34; Finding 13—R. 34-35]. Mr.

Sando did not even consult with the government water expert, Max Bookman, in evaluating the water supply to *V-R Ranch* [Tr. 3795, lines 10-16], and his opinion that there was a limited water supply was based on only one of the 9 water resources [Finding 11—R. 30-32] namely, the 340 acre foot capacity of Deep Cat Lake [Tr. 3795, lines 17-25].

Furthermore, the fallacy of projecting the growth rate of 1947 through 1957 into the future was apparent from his testimony on cross-examination, to the effect that as of the dates of the sales in Conejo Valley (June 1955 to June 1957) there were 15,000 to 20,000 acres in Conejo Valley, compared with about 11,000 acres in Coyote-Santa Ana Valley, and that 80% of the Conejo acreage was vacant prior to 1954. That the rate of absorption in Conejo Valley for period prior to 1955 was very low, and at the rate of absorption that occurred in the 11 years preceding 1955, it would take scores and decades to absorb the land in Conejo Valley [see Tr. 3900, line 16, to 3904, line 10]. Yet it was apparent that most of the acreage in Conejo Valley was subdivided fully when the commission examined it in December, 1959. The sales occurred between June 1955 to June 1957 [see 19 Series Sales dates—pp. 78 to 85—Appendix "C" to government brief].

Thus the commission with justification did not find the highest and best use of residential subdivision on portions of *V-R Ranch* property from the *past history,* as Mr. Sando did, but from "reasonable future probability in light of the history of the region in general in its transition from agricultural to residential character", as this Court stated is proper (*United States v. Lewis,* 308 F. 2d 461).

This method used by Mr. Sando of trying to find highest and best use by projecting *past history* into the future is shown to be wrong by this Court on the prior appeal, where the Court stated:

> "*The highest and best use is not found from the past history* or present use of these lands but from reasonable future probability in light of the history of the region in general in its transition from agricultural to residential character. * * *" (*United States v. Lewis* (1962), 308 F. 2d 453, 461).

In effect, what the Government is asking this Court to do is to usurp the function of the commission to weigh the testimony of the various witnesses. The witnesses differed in their opinions of the highest and best use of the lands and upon the *reasonable future probabilities,* and after hearing all the witnesses, examining all the sales and all the exhibits, the commission came to its own conclusion, which is amply supported by the evidence. Mr. Sando, based on his two assumptions of not sufficient water and projecting past subdivision activity into the future, neither of which assumption was soundly based, expressed his opinion of just compensation at $598,000.00 [Pltf. Ex. 51—Tr. 3759-3765]. Mr. Jerry B. Carll, Sr., expressed his opinion of $2,016,475.00 [Deft. Ex. "3F"—Tr. 1681-1684—Appendix "C"]. Both witnesses testified at great length in support of these opinions. Mr. Sando's testimony covers 512 pages of the transcript [direct examination—Tr. 3491-3781; cross-examination—Tr. 3782-3904] and Mr. Carll's testimony covers 436 pages of transcript [direct examination—Tr. 1666-1907; cross-examination—Tr. 1908-2077; and re-direct examination—Tr. 2078-2103].

The commission, after hearing all the testimony, both oral and documentary, including two other valuation witnesses for the landowner (Mr. Ralph B. Nunnelley and George S. Mann), and one other witness for the Government (Bernard G. Evans), and having viewed the property and alleged comparable sales of both parties, did not accept either Mr. Jerry Carll's or Mr. Sando's opinions entirely, but came to its own conclusion of just compensation of $1,163,400.00 [R. 51]. The Government now, based on fragmentary excerpts from the transcript of the testimony of Mr. Jerry Carll and Mr. Sando, is asking this Court to say that the commission's report is "clearly erroneous" because the commission did not agree one hundred percent with Mr. Sando. We respectfully submit that this Court should not attempt to do so, but should review the district judge in light of his resolution only of the issues raised in the objections.

In *Cunningham v. United States* (1959—4th Cir.), 270 F. 2d 545, 549, the court said:

> "[2, 3] This is not to say there were no conflicts in the evidence. Some witnesses thought not more than 100 acres were really suitable for subdivision. The testimony of others supports the commission's findings. If the dubious references are eliminated, the preponderance of testimony supports the findings of the commissioners. *They heard and saw the witnesses. What may be uncertain to us from reading the transcript was plain to them.* They also clearly examined the land themselves and compared Tract A with other developed areas on the island. Under these circumstances, Rule 53(e)(2) of the Federal Rules of

> Civil Procedure, made applicable here by Rule 71 A(h), 28 U.S.C.A., requires acceptance of the findings of the commission." (italics added).

And it was stated in *Rapid Transit Co. v. United States* (1961—10th Cir.), 295 F. 2d 465 at 467:

> "Since the award was well within the range of credible testimony, this court will not reweigh the conclusions or retry the facts."

And in footnote 3, page 467, the court in the *Rapid Transit* case said:

> "The report of the commissioners indicated that a personal view of the lands had played an important part in arriving at what constituted a proper award. The weight to be given to this factor as against opinion evidence is exclusively for the trier of the facts."

We believe that the foregoing rules apply very clearly to the instant situation.

Returning to the Government's brief, the statement made on page 56 that; "Only an economic idiot would pay the same price for land in the rural Casitas Valley as he would for land near Santa Barbara or Carpenteria or in the then developing area near Moorpark and Thousand Oaks," is an outrageous statement. The *V-R Ranch* lands were infintely more beautiful and desirable than any of the lands in the areas to which the Government refers, and as the commission states so aptly:

> "There are few areas in as close proximity to the metropolitan areas of Southern California having as desirable a climate, scenic attributes, and general cultural environment as the subject parcel had." [R. 20].

And again:

> "7. The Commissioners find that the buyers in these other areas [such as Conejo and Thousand Oaks—see Finding 6—R. 20] were acquiring lands for similar and comparable uses in areas having a climate, scenic beauty, water supply and general environment less favorable than that of the subject parcel." [R. 20-21, portion in brackets added.]

Thus, the commission found that so far as climate, scenic beauty, water supply and general environment, *the V-R Ranch* property was better than Conejo, and since there were buyers actually acquiring said lands for the same or similar uses as the subject property, and this remark about economic idiots has a hollow ring.

If the Government seeks to infer that the commission did not consider all factors of comparison, including economic ripeness for subdivision, they are likewise mistaken. The demand in the area is fully covered in Finding 5 [R. 13-20]; Finding 6 [R. 20]; and Finding 7 [R. 20-21] of the report. Among other findings, the commission found specifically:

> "Properties in Ventura County and in the area of CR 17 were at the time of the take *greatly in demand* because, among other things, a large number of people of retired status were seeking country life on either residential subdivisions, or country estates, or rural ranches, or estates with or without avocado, citrus and deciduous trees either in family orchard size or in [387] small or large commercial developments." [R. 18—italics added].

If the Government seeks to infer that the commission assigned to the 321 acres of *V-R Ranch* land that had a highest and best use for development and use for residential subdivision, the same price per acre as these other sales they are equally wrong—unfortunately for Appellee. As we pointed out earlier, Mr. Jerry Carll, Sr., relied on four sales in placing an opinion of $3,100 per acre on the 321 acres in Classification No. 1. These sales were 22-1—$3,176.00 per acre; 23-5—$3,225.00 per acre; SB-1—$3,358.00 per acre; SB-2—$2,893.00 per acre [see Deft. Ex. "3F," Tr. 1684; Appendix "B"]. These four sales average $3,188 per acre, and this price multiplied by the 321 acres would amount to $1,023,348.00 for the 321 acres alone, but the commission only awarded $1,104,900.00 for the entire 826 acres taken (including the extensive ranch improvements valued by witnesses from both sides at from a minimum of $139,000.00 to a maximum of $210,000.00). Subtracting the 321 acres of potential residential subdivision land from the total 826 acres, this leaves 505 acres, including all of the lands described in Classification 2—154.26 acres with highest and best use for development to rural homesites [Finding 18(b)—R. 43]; 38.52 acres in Classification No. 3 with highest and best use for development for view-type country estate or estates [Finding 18(c)—R. 43]; the 67.60 acres of creek bottom land [Finding 18(e)—R. 44]; the 12.06 acres in Classification 7 with highest and best use as a dude ranch or ranch home [Finding 18(g)—R. 44]; the 107.59 in Classification No. 8 with highest and best use for large acreage estates [Finding 18(i)—R. 45]; and many others.

So it is clear, beyond any question, that the commission did *not,* as the Government seems to imply from their "economic idiot" remark, assign to the 321 acres of potential residential subdivision land of *V-R Ranch* the same price per acre as subdivision land was bringing "for land near Santa Barbara or Carpenteria or in the then developing area near Moorpark and Thousand Oaks". It is also perfectly clear that the commission based its values upon the economic situation and the state of development (as well as the reasonable future probability of development) of the Santa Ana and Coyote Valleys at the date of the taking.

B. Answer to Government's Argument That There Are Duplications and Contradictions of Value in Substantial Amounts.

In its Argument IVB on page 57, the Government says "There is every reason to believe that there are duplication *(sic)* and contradiction of values in substantial amounts." On the contrary, an examination of the *V-R Ranch* report shows there is no duplication and there is no "contradiction" (whatever that means) of value.

1. Lands classified as protective fringe areas: (Govt. Br. IVB-1, p. 57)

The Government says "The reports of the commission do not exclude such duplication," but the *V-R Ranch* report clearly shows there was no such duplication. Based upon the assumption that "the commissions accepted the landowners' theories here, just as they did on future subdivision values," the Government argues that there must be a duplication of values.

An examination of the *V-R Ranch* report shows that the only lands falling into the highest and best use as

protective fringe area consist of 32.56 acres out of the larger parcel of 1,594 acres [of which CR. 17—826.06 acres, the part taken, was a part only] [R. 25]. These 32.23 acres are the following:

12.23 acres—Classification No. 4—[Finding 18(d), R 44]. This Classification No. 4 is described in Finding 10 (d), R. 27, as follows:

> "(d) Classification No. 4. An area of 12.23 acres consisting of sloping to relatively steep lands between said Coyote Creek and the lands hereinafter described as Classification No. 9."

10 acres—Classification No. 6—Finding 18(f), R. 44. This Classification No. 6 is described in Finding 10(f), R. 28, as follows:

> "(f) Classification No. 6. An area of 10 acres comprised of rough, steep lands, the only utility of which would be as protective fringe lands in the event of a development of a dam at the area referred to herein as 'Dunshee Narrows' or 'Dunshee Dam Site.' "

10.33 acres—Classification No. 10 [Finding 18(j), R. 45]. This Classification No. 10 is described in Finding 10(j) [R. 29], as follows:

> "(j) Classification No. 10. An area of 10.33 acres constituting a peninsula lying between the Coyote Creek bottom land [396] and the 16.50 acres referred to as 'Proposed Lake No. 2.' "

And in ascribing a highest and best use to these 10.33 acres in Classification No. 10, the commission found *alternative* uses, saying in Finding 18(j) [R. 45]:

> "(j) The area of 10.33 acres, referred to hereinabove as Classification No. 10, has a highest and

best use as protective fringe *and* approachway to the western portion of Classification No. 1.. *The lands comprising this area would also have a use as an alternative approach to the area lying west of Coyote Creek and could be used not only for clubhouse purposes, but for access to these lands."* (Emphasis added.)

Since the 10.33 acres in Classification No. 10 has alternative uses and must be valued in consideration of all uses, it does not come in the category of "protective fringe areas." This leaves only 12.23 acres in Classification No. 4 and the 10 acres in Classification No. 10 in the category of "protective fringe areas"—or 22.23 acres out of nearly 1,600 acres in this category. Since the 10 acres in Classification No. 6 is described by the commission as "rough, steep lands, the only utility of which would be as protective fringe lands in the event of a development of a dam in * * *," the Dunshee Dam Site, it is clear the commission put little if any value on it. Jerry B. Carll, Sr., was of the opinion it was worth only $50.00 per acre [See Ex. "3F," Tr. 1684, Appendix "C"], and the lowest values the Government appraisers put on *any* of the *V-R Ranch* land was $100.00 per acre [See Pltf. Ex 8—Tr. 2369, Evans' chart; and Pltf. Ex. 51—Tr. 3759, Sando chart]. It is clear that so far as *V-R Ranch* property is concerned, this is much ado about nothing. Besides, the landowners' witnesses made it quite clear they made no duplication of values on the protective fringe land.

2. The improvements on the V-R Ranch property.
(Govt. Br. IVB-2, p. 60)

The Government argues that one of the landowners' witnesses, Mr. Jerry B. Carll, Sr., reflected the value

of the improvements in the 12.06 acre in Classification No. 7, "Headquarters Area," in the value of the land and also added to the total land values the value of the improvements. As we shall show, this is *not* true. Based on this false premise, the Government argues that there is every reason "to suppose the commission likewise followed his valuations" (Govt. Br. p. 62). We only wish they had followed Mr. Carll's valuations and then the award would have been $2,016,475.00 instead of $1,163,400.00. How the Government can keep saying that the commission followed Mr. Carll's valuations when the award is $853,075.00 *lower* than his opinion, we cannot understand.

In the first place this contention was not made to the district judge. The *only* objection referring to Classification No. 7 was the Government's Objection 24 [R. 72] to the effect that the finding that this 12.06 ac. area had a highest and best use as a dude ranch or as a ranch home is, *insofar as it relates to the use of the area for a "ranch home"* was not supported by the evidence since no witness in the case testified to such a use. This is the *only* objection relating to this area that was presented to and argued before the district judge. We pointed out to the district judge, in answer to the *issue based by this objection,* first, that the main house in this area is a ranch home, and is described fully in Defendant's Exhibit "S" [Tr. 59].

We also pointed out that all the witnesses testified to a variety of uses. See for example Jerry B. Carll Sr., who said it could be used as the "development headquarters" [Tr. 1707, lines 9-25] and referred to it as the "main house such as ranchers build" [Tr. 1734,

lines 8-23] and that the "developer may live in it" [Tr. 2059, lines 16-22]. Furthermore Government witness Bernard Evans testified the highest and best use for the *V-R Ranch* property was for a stock ranch or a dude ranch. [Tr. 2159, line 11, to 2160, line 15], and Mr. Sando referred to it as the "main ranch house," [Tr. 3543, line 22 and 3548, lines 15-20].

Now, for the first time on this appeal the Government argues a duplication occurred.

In its statement on page 61 of its brief to the effect that the small tract of 12.06 acres in Classification No. 7 (which the commission found had a highest and best use as a dude ranch or as a ranch home [R. 44]) that no one would pay $4,000 an acre for the land and $141,000 up to $210,000 for the improvements, shows that the Government misses the entire point of the breakdown. Mr. Carll (as did all the witnesses, including those of the Government) valued the entire area of 1594.52 acres *before* the taking and his opinion of $2,107,000.00 is the total value of the 1594.52 acres as improved is set forth in his Chart No. 1 [Ex. "3F"—Appendix "B"]. In his *breakdown* of this figure he felt that the land (1594.52 acres) contributed $1,965,674 [see p. 6 of Ex. "3F"—Appendix "B"] and that the specific improvements listed on page 7 of Exhibit "3F" contributed $141,400 to the total value of the entire 1594.52 acres and that the total "Fair Market Value of 1594.52 Acres Considered as A Whole, and as Improved in August 12, 1957; and Before the Taking," was $2,107,073 [see p. 7—Chart No. 1, Ex. "3F"—Appendix "B"]. He then found the value of the remaining 768.46 acres after the take at $90,525.00 as set forth on Chart No. 2 of Exhibit "3F." The *dif-*

ference between the whole before and the remainder after is $2,016,475 representing his opinion of the total just compensation. This is precisely in accord with the law and precisely as all the other witnesses testified. Mr. Carll's Chart No. 3 is his *breakdown* of the value of the part taken Cr. 17 as of August 12, 1957. The difference between this figure of $1,707,065 and the total just compensation of $2,016,475 is severance damages. The $4,000 per acre contribution of the 12.06 acres in Classification No. 7 is Mr. Carll's opinion of the contributive value of these level, landscaped and otherwise developed *lands* to the whole before the take. An analysis of the various charts of the witnesses is set forth, for the convenience of the court in Appendix "G" to this brief.

But in the second place, it is perfectly clear that Mr. Carll did *not* reflect the value of the structures described in the seventh page of his valuation chart [Ex. "3F", Tr. 1684, Appendix "B"].

Mr. Jerry Carll testified as follows, page 1720, line 13 to 1730, line 1:

> "Q. You have been referring to Exhibit 'H' by reference in Exhibit 'Y' in this case. All right, sir. Now will you then turn to your Chart No. 1 of Exhibit '3F' on page 7 of said chart. What does that purport to be, sir? A. That is my opinion of the contribution of the improvements on the amount of value of the improvements contributed to by the whole.
>
> Q. You have a total of the items listed of $141,400.00. A. Yes.
>
> Q. That is your opinion of the total value contributed to the whole by the improvements. In

other words, enhancement of value by reason of these *specific improvements that you have listed.* A. Yes sir, $141,400.00." (Italics added.)

On the issue of possible duplication of values on the ranch improvements, Mr. Carll, in discussing his sale 23-5, stated that the land in the headquarters area (12.06 acres in Classification No. 7) was more highly developed than the land in Sale 23-5 [Tr. 1867, lines 16-20] and the following occurred on page 1869, line 18, to page 1870, line 25 of the transcript:

"Commissioner Whelan: You mentioned the headquarters area that you compared the subdivisable land of Sale 23-5 to the headquarters area which I believe you assigned a contributive value to your opinion of fair market value of $4,000.00 an acre.

The Witness: Yes, sir.

Commissioner Whelan: In your testimony you stated that the improvements on the headquarters area were of much more value than $4,000.00 an acre.

The Witness: Yes, sir.

Commissioner Whelan: In your testimony you stated that the improvements on the headquarters area were of much more value and of finer nature than of any improvements in Sale 23-5, I believe that was in substance what you stated.

The Witness: Yes.

Commissioner Whelan: Did you ascribe any added value to the land within the headquarters area because of the presence of the improvements thereon?

The Witness: Well, when talking about the improvements this attached to the land, like landscaping and . . .

Commissioner Whelan: Water piping?

The Witness: Water piping and walks and little walls.

Commissioner Whelan: Not the buildings.

The Witness: Not the buildings.

Mr. Anson: The buildings that total $141,400 are not the improvements you are talking about now?

The Witness: No sir, I am talking about the part that is attached to the land.

Mr. Anson: Over and above and in addition to the items listed on your Chart No. 1?

The Witness: Yes, over and above on page 7.

Q. Page 7 of your chart. All right, that clarifies it."

In regard to this Classification No. 7, the commission described this area as follows:

"(g) Classification No. 7. An area of 12.06 acres referred to in some of the testimony herein as either 'Headquarters Area' [395] or 'Dude Ranch Area,' comprised of *level,* highly developed lands upon which are located the following-described ranch improvements: [Main ranch house], domestic water lines supplied from nearby springs and other imrovements, [a duplex,] [foreman's house and office,] [guest house,] [bunk house,] [ranch kitchen,] [dining room] and [apartment,] [horse barn and corrals,] [dairy units] and [milkers' house,] [work shop,] [butcher house,] [hay barn,] [hay shed,] [scale house] and [cat-

> tle pens,] [tool shed,] [filling station] and other minor improvements, including roads, fences, underground piping, cattle guards, and so forth. That said improvements at the date of said take constitute a unit for agricultural products, and a dairy, cattle and dude ranch. That in additional to the foregoing improvements, the said parcel CR 17—826.06 acres—included an irrigation system—permanent and mobile—water distribution system, concrete pipe basins and concrete watering troughs, fire hydrants, sprinkler outlets, etc." [R. 28-29, brackets and italics added.]

Those portions of the improvements above listed which we have placed in brackets are the only structures which are listed on Mr. Carll's breakdown of the improvements which contributed $141,400.00 to value of the whole. On the seventh page of his opinion chart [Deft. Ex. "3F", Tr. 1684, Appendix "B"] Mr. Carll listed fifteen structures which in the breakdown of his opinion of value was the "total value contributed to the whole by improvements, $141,400". In *addition* to the contribution of $141,400.00 to the value of the whole 1594.52 covered by this portion of his total valuation chart, Mr. Carll pointed out that the 12.23 acres in Classification No. 7 was otherwise *level* and highly developed land and using that portion of his testimony cited on page 61 of the Government's brief stated:

> "By that I mean landscaping, fencing, water reservoirs, piping, swimming pool excavations * * * ." [Tr. 1707].

It will be noted that not one single structure listed separately on page 7 of his Exhibit "3F" [Tr. 1684,

Appendix "B"] as contributing $141,400.00 to the value of the whole 1594.52 acres is included in the landscaping, fencing, water reservoirs, piping, swimming pool, excavations, which he said was what he meant by "highly developed land". It will be noted that in addition to the *structures* included in Mr. Carll's $141,400.00 improvement schedule, and placed in brackets by this brief writer in the above commission description of Classification No. 7, the commission found in addition to these listed structures:

> "* * * and other minor improvements, including roads, fences, underground piping, cattle guards, and so forth."

It is perfectly clear that when Mr. Carll referred to the 12.53 acres in Classification No. 7 as "highly developed *land*", he was referring to these improvements *other* and in addition to the fifteen structures listed on page 7 of Exhibit "3F", which fifteen structures in his opinion *breakdown* contributed $141,400.00 to the value of the whole. Mr. Carll testified that he did *not* duplicate any of the value of the improvements listed on his Chart No. 1—[Deft. Ex. "3F'—Appendix "B" to this brief].

He said so clearly and unequivocally. In addition, an analysis of his $4,000.00 per acre opinion of the value of the 12.06 acres in Classification No. 7 shows clearly that he did *not* and could not have reflected value of the fifteen structures listed on page 7 of his Exhibit "3F" in the value of the land. Mr. Carll valued the land in Classification No. 1 at $3,100.00 per acre based on Sale 22-1 at $3,176.00 per acre, sale 23-5 at $3,225.00 per acre, sale SB-1 at $3,358.00 per acre, sales SB-2 at $2,893.00 per acre, which is an average

for the four sales of a sale price of $3,188.00 per acre for *unimproved* land [see Ex. "3F", Tr. 1684; App. "B"]. The area of 12.06 acres in Classification No. 7, Mr. Carll valued at $4,000.00 per acre, using sale 23-5 at $3,225.00 per acre, sale 23-7 at $3,996.00 per acre, and sale SB-1 at $3,558.00 per acre. It can be seen that these three sales average about $3,560.00 per acre. The lands in the 12.06 "Headquarters" area in Classification No. 7, at a value (in Mr. Carll's opinion) of $4,000.00 per acre, is a mere $440.00 per acre more than the value indicated by these sales. Mr. Carll carefully explained that *in addition* to the fifteen structures which in his opinion contributed $141,400.00 to the value of the whole:

> "This is highly developed land. *By that I mean* landscaping, fencing, water reservoirs, piping, swimming pool excavations * * *." [Tr. 1707—Italics added].

Thus, Mr. Carll felt that the 12.06 acres in Classification No. 7 had a value of only $440.00 per acre more than the $3,560.00 average sales price of the three most helpful sales (23-5, 23-7, and SB-1), and these lands in Classification No. 7 had roads, cattle guards, landscaping, underground piping, fencing, water reservoirs, and swimming pool excavations, *in addition* to the fifteen structures which contributed $141,400.00 to the value of the whole 1594 acres.

Therefore, it is clear that Mr. Carll did *not* duplicate any values. The other landowner appraiser, Mr. Mann, likewise placed a value of $4,000.00 per acre on this land, and there is no contention that he duplicated any values [See Deft. Ex. "3D", Tr. 1265].

Besides, the Government appraisers handled the improvements in exactly the same manner as Mr. Carll [see *Sando* Pltf. Ex. 51, Tr. 3759; and *Evans* Pltf. Ex. 8, Tr. 2369]. In his *breakdown* of the fair market value of the part taken, Mr. Sando included an item of "Improvements as itemized and described, $139,000.00, and Mr. Evans, after placing a value on various categories of the land, included in his *breakdown* an item reading: "Add: Improvements $142,000". The *structures* which Mr. Evans and Mr. Sando included in their lists were virtually identical with those of Mr. Carll [see lists in back of Deft. Ex. "S", Tr. 59].

3. Deep Cat Lake. (Govt. Br. IVB-3, pp. 62 to 63).

The Government contends, on page 62 of its brief, that there was a duplication of values as regards the 17.27 acre lake on the *V-R Ranch* property.

The witnesses were asked (exactly as the Government witnesses were asked) to give a *breakdown* of their value opinions of the contributive part each category of land and improvements to the whole. This *breakdown* is given in the various charts—Deft. Ex. "2W", Tr. 765; Deft. Ex. "3D", Tr. 1265; Deft. Ex. "3F", Tr. 1684; Appendix "B"; Pltf. Ex. 8, Tr. 2369; and Pltf. Ex. 51, Tr. 3759. Thus each witness on both sides who expressed an opinion of value was treated exactly the same.

Mr. Nunnelley in his classification chart listed as a separate item, Item No. 16, Deep Cat Lake, 17.27 acres to which he assigned a value contribution to the whole of $1,250.00 an acre for a total value contribution of the land underlying the lake of $21,587.50. When he reached this point of his testimony on direct examina-

tion the following colloquy occurred between the Commissioners and the witness, which we believe establishes that the commission did not include any duplication for Deep Cat Lake in its award. On page 773, line 15 of the Transcript the following colloquy occurred:

"Commissioner Whelan: Mr. Nunnelley, would the value of the land underlying Deep Cat Lake be represented by the enhancement in value to the surrounding lands of which it was a part rather than having a separate amount set up for it?

The Witness: I believe you are referring to—what is it—$1,250.00?

Commissioner Whelan: Item 16.

The Witness: Item 16, I might explain my reason on that sir, is this, that the lake itself, the primary purpose of the lake is for water for the property, an additional use for the lake is its recreational area. With the filtration you have boating and fishing and such as that on it. There is an additional value in my mind as a commodity because it is a lake over and above the water supply.

Chairman Mayock: Mr. Nunnelley. Since you have chosen to value the property as enhanced by the improvements on an acreage basis or would you feel that the acreage basis should apply to the area of the dam site itself?

Mr. Anson: In other words, as I understand it—

Chairman Mayock: And in acres thereto.

Mr. Anson: Yes, you place a value on the land underlying the dam itself, the lake itself.

The Witness: Yes, there was a value placed upon the land underlying the lake.

Chairman Mayock: That is the point. The theory of your valuation here is a per acre valuation, isn't it?

The Witness: That is correct.

Chairman Mayock: And therefore it would be improper—the large acreage which was used up for the dam site would be deleted from the total of acres considered, is that right?

The Witness: Yes, sir, that is correct.

Chairman Mayock: And then you utilized Deep Cat Lake acreage which was then for the purpose of utilizing on the acreage and putting a value on it as an acreage basis.

The Witness: That is correct.

Mr. Anson: Mr. Nunnelley, if you were to eliminate from your breakdown—and this is just a breakdown of your final opinion of value—Item No. 16, $21,587.00 and simply spread that into the subdivision lands surrounding it, you would then have to add, would you not, to the $3,000.00 acre that you assigned to the subdivision portion?

Mr. Read: That isn't the question.

Mr. Anson: We are trying to clarify it.

Chairman Mayock: I think I am clear on the theory of his detail of contribution values to the whole. His idea is, as I see it, that he made acreage a yardstick and accounted for all of the acreage that was in the parcel on that yardstick basis.

The Witness: That was correct sir, yes sir.

Mr. Anson: Yes, and it is simply a breakdown.

Chairman Mayock: I understand—"

Mr. Nunnelley was examined fully on whether or not he had duplicated his values so far as the 17.27 acres

underlying the Deep Cat Lake was concerned. He testified categorically that he had not made such duplication, in the following testimony, starting on page 800, line 16, of the Transcript:

> "Q. Then Item No. 16, Deep Cat Lake, at $1250 an acre—I think you have already covered that haven't you. A. That is correct.
>
> Q. If you simply put zero there in view of the fact that it has a lake, it is an existing lake, the $21,587.50 which you have assigned in your breakdown to that, what would you do with that? A. It would be distributed to the property as a whole, to the other acreage. It was a matter of putting it one place or another—." [See also the full explanation, Tr. 801, line 1, to 804, line 9].

Thus there was no "double valuation of Deep Cat Lake" as far as Mr. Nunnelley was concerned. But in any event, the commission did *not* follow Mr. Nunnelley's classifications of land (and obviously not his value opinions, since the award for the part taken [$1,104,900—R. 52] was $755,600.00 less than Mr. Nennelley's opinion), and so even if there was a duplication (which the record shows there was not) in Mr. Nunnelley's opinion, it is clear that the commission did not include any duplication in its award.

With regard to Mr. Carll's testimony, he testified that Classification No. 1 consisting of 338.30 (which included the 17.27 acres underlying the lake) had a contributive value to the whole part taken of $1,048,730.00 [see Ex. "3F"—Appendix "B" to this brief]. This gave a breakdown per acre for the entire 338.30 acres of $3,100 per acre. In his testimony on page 1977 of the transcript, Mr. Carll carefully explained that he

did not duplicate values, but that in *his breakdown charts* he sought to account, as a matter of good bookkeeping for all of the acreage in the take (826.06 acres), and the larger parcel (1594.52 acres), of which the part taken was a part only. He testified as follows starting on page 1978, line 18 of the transcript:

"Chairman Mayock: Mr. Carll, what you did then was to take the total of acreage that is in I [Classification No. 1] let us say, and Deep Cat Lake is in it, isn't it?

The Witness: Yes sir.

Chairman Mayock: And gave a value of the whole on an acreage basis.

The Witness: Yes sir.

Chairman Mayock: It could well have been expressed by taking the acreage amount of Deep Cat Lake, subtracting it from the whole and then adding it again as a value of water to the whole acreage, couldn't it.

The Witness: Yes, that is one approach.

Chairman Mayock: And you would have come up with the same figure, isn't that right?

The Witness: Same total contribution.

Chairman Mayock: So instead of considering Deep Cat Lake as value from an acreage standpoint as a standard, you used acres for the whole piece, is that right?

The Witness: That is entirely correct.

Chairman Mayock: I see."

And again on cross-examination by the Government attorney, Mr. Read, the following occurred, starting on Transcript page 977, line 15:

"Q. Mr. Carll, I would like you to explain why you have ascribed a subdivision contributive value

of $3,100.00 per acre to the Deep Cat Lake which of course would never be subdivided. A. Well, it is really very simple. If I may refer to Exhibit "3G", I didn't consider that the water appropriated, water of Deep Cat Lake could be separated and would be separated from the subdivision lands. Now, as I previously stated in direct examination, I considered that all of this subdivision land had the same amount of desirability and that the difference in price was merely the difference in cost to develop and I didn't think that this land in Deep Cat Lake could be separated from that and that when they were sold they would be attached to that land.

Q. That of course is true * * *."

And finally on cross-examination with regard to this issue, the following occurred, starting on page 1882, line 17 of the transcript:

"Q. Mr. Carll, I want to be sure I understand your answers to Mr. Mayock's question concerning the contributive value of Deep Cat Lake to the whole and why you have assigned a subdivision value of $3,100.00 to the lake bed. Is it a fair statement to say that in your opinion the 338.30 acres in your Classification No. 1 could be reduced by the amount of acreage of Deep Cat Lake (17.27 acres) which would leave 321.03 acres and a per acre contributive value reflecting the addition of the contributive value of Deep Cat Lake itself which would be—I won't bother to figure it out.

Mr. Anson: $53,557.00.

Q. * * * which could be divided among these 321.07 acres so as to increase their contribu-

tive value to the whole from $3,500.00 to whatever the result would be after you made this?

Commissioner Whelan: From $3,100.00 to $3,200.00 and some, it would be not quite $3,300.00 per acre.

Mr. Read: Is that it?

Commissioner Whelan: $3,100.00 an acre. An assigned value on 338 acres if you spread $3,000.00 among some 320 acres, it would be $175.00 roughly an acre more.

By Mr. Read:

Q. That is a fair statement? A. That is the basic process, of course, you couldn't reduce the value of the land in that lake to nothing. If you are going to do that, then it has to be—every acre has to be accounted for, it would have to be in a different classification then."

Thus it was very clear to the commission knew exactly what Mr. Carll had done, and they were not confused on this point in the slightest. Thus a comparison of the actual testimony with the findings shows the validity of that part of the statement in *Cunningham v. United States, supra*, that:

"They [the commission] heard and saw the witnesses. What may be uncertain to us from reading the transcript was plain to them * * *."

Thus Mr. Carll's testimony regarding *Deep Cat Lake* was not a duplication. But even if it had been, it is clear the commission did not include any duplication. The Government recognizes that the commission did not include the lake in the amount of acreage "listed for subdivision value" (Govt. Br. p. 63), but argues nevertheless that because it is not clear just where the com-

mission considered the lake it *"does not expressly exclude the duplication."* We think the report clearly does expressly exclude any duplication. The thirteen categories of land to which the commission assigned highest and best uses total 1577.25 acres [a total of the acreage covered in Classification No. 1 to No. 13, inclusive, R. 24 to 30], although the commission specifically found that the larger parcel was 1594 acres, more or less [R. 25]. Thus it is clear that adding the 17.27 acres underlying the lake to the 1577.25 acres in Classifications No. 1 to No. 13, inclusive, gives a full accounting of the 1594.52 acres in the larger parcel.* Also, although the commission adopted Mr. Carl's Classification No. 1 as potential residential subdivision land, they carefully subtracted the 17.27 acres underlying the lake from Mr. Carll's total of 338.30 acres in Classification No. 1 [See Deft. Ex. "3F", Tr. 1684; Appendix "B"] and found that Classification No. 1 consisted of 321.03 acres [Finding 10(a), R. 25-26] with a highest and best use (of 321.03 acres) "for development and for use as a residential subdivision [Finding 18(a) R. 43]. This 321.03 acres is the exact total of the 214.81 acres east Coyote Creek and 106.21 acres west of Coyote Creek [See Deft. Ex. "3F", Tr. 1684; Appendix "B"], and the 17.27 acres is carefully *not included* in the acreage found to have a highest and best use for development and for use as a residential subdivision. Despite the exclusion from the 321.03 acres of the 17.27 acres underlying the lake the commission, after stating that the 321.03 acres in its Clas-

*This can also be seen from Appendix A to the government brief, where after showing the total of 15,577.25 acres with highest and best uses they point out in footnote (**), "In addition to this total, 17.27 acres was Deep Cat Lake [R. 25]."

sification No. 1 consists mostly of gentle sloping, rolling land, including 214.82 acres lying to the east of said Coyote Creek and 106.21 acres of land lying to the west of said Coyote Creek, specifically states:

> "That lying *between* the two areas heretofore discussed was an existing lake or reservoir referred to as 'Deep Cat Lake' with * * *, an area of 17.27 acres, and capable of storing as of the date of take approximately 338 acre feet of water. * * *" [R. 25-26] (Italics added).

In addition to specifically excluding the lake from the potential subdivision land in Classification No. 1, the commission specifically found that the lake was a part of the water resources available to the property, listing said lake as water resource (f) in Finding 11, as follows:

> "(f) That in addition to the foregoing water resources, the existing Deep Cat Lake is capable of storing, as of the date of the take, approximately 338 acre feet of water under the existing permit for the appropriation of 418 acre feet." [R. 31.]

Thus, in answer to the Government's statement on page 63 of its brief—"However, the report is not clear just where the commission considered the lake, if at all"—we can only suggest that the Government read the report. It is clear that the commission considered the lake exactly as they said they did "* * * in addition to the foregoing water resources * * *" [Finding 11 (f), R. 31-32]. We do not see how the commission could have more clearly, unequivocally and expressly excluded any duplication of the value of Deep Cat Lake.

ARGUMENT IV.

Answer to Government's Argument V That "Upon Remand" a Jury Trial Should Be Directed.

The contentions under Argument V, pages 63 to 67 of the government brief, constitute simply *another* attempt to set aside the order of the District Judge made under Rule 71A(h) of the Federal Rules of Civil Procedure. As we stated on page 26 of this brief in commenting on the Government's Specification of Error No. 11—to the effect that the District Court erred in submitting these cases to commissions under Rule 71A (h)—this contention has already been decided adversely to the Government's claims in *United States v. Hall* (1960, 9th Cir.), 274 F. 2d 856, in which case the Supreme Court denied certiorari.

We feel, for the reasons set forth herein, that no remand should be made in this case, but if such is made, and there are any inadequacies in a particular report, they must be specified by objection to the report, and if any case be remanded for correction of error in this area, it must be with instructions that by report or finding resolution of some "specific dispute be made or some specific inadequacy be remedied." *(United States v. Lewis,* 308 F. 2d 453.)

To remand these cases for a jury trial would result in a gross miscarriage of justice to these landowners and to deny them "just compensation" for their property which was taken from them back on August 12, 1957, *six years ago.*

Conclusion.

It is respectfully submitted that the judgment in this case should be affirmed.

Respectfully submitted,

ANSON, GLEAVES & LARSON,
By JOHN B. ANSON,
Attorneys for Appellee,
V-R Ranch Company.

Certificate.

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

JOHN B. ANSON,

SUMMARY AND CLASSIFICATION OF ACREAGE SALES

Illustrative of the Testimony of

Laurence Sando, M.A.I. for Parcel CR-17 in Civil 974-57 PH filed 8/12/57

Sale No.	Acres	Deed Dated	Deed Recorded	Sale Price	Aver. per Acre	Price adjusted to Aug. 1957		Orchards	Irrigated	Fairly Level	Mesa or Rolling	Wooded Creek Land	Moderate Slopes or Ridges	Steep Hills or Mountainous
1	26.00	3/28/57	5/28/57	$ 8,000	$308	$ 8,000	$308 Ac.	—	—	—	$850 5 Ac.	$667 3 Ac.	—	$100 18 Ac.
2	62.15	11/1/56	12/13/56	$ 27,000				$950 12 Ac.	—	$600 18 Ac.	—	—	$200 11 Ac.	$75 21 Ac.
			Imps.	3,000										
			*Land	$ 24,000	$386	$ 26,000	$420 Ac.							
2A	14.88	7/10/57	8/1/57	$ 5,000	$336	$ 5,325	$355	$500 8 Ac.	—	—	—	$275 4 Ac.	—	$75 3 Ac.
2B	55.00	4/12/57	4/19/57	$ 13,000	$236	$ 13,000	$236 Ac.	$1,000 2 Ac.	—	—	—	$667 3 Ac.	$160 50 Ac.	—
4	60.00	5/8/56	7/24/56	$ 12,000	$200	$ 13,000	$217 Ac.	—	—	$825 4 Ac.	—	—	$225 33 Ac.	$100 23 Ac.
5	183.00	6/23/53	9/14/53	$115,000		$140,500								
			Imps.	20,000		20,000		—	$1,500 8 Ac.	—	$775 80.0 Ac.	$600 60 Ac.	$300 35 Ac.	—
			Land	$ 95,000	$519	$120,500	$658							
7	26.73	4/18/55	5/5/55	$ 23,500										
			Imps.	3,500				$1,250 10 Ac.	—	$900 12 Ac.	—	$634 4.73 Ac.	—	—
			Land	$ 20,000	$750	$ 26,500	$991 Ac.							
12	47.82	2/28/57	3/19/57	$ 50,000										
			Imps.	10,000				$2,000 2.5 Ac.	—	$600 30.00 Ac.	$1,000 15.32 Ac.	—	—	—
			Land	$ 40,000	$836	$ 40,000	$836 Ac.							
16	68.16	2/10/56	3/1/56	$ 57,000	$838	$ 64,750	$950 Ac.	—	$2,000 2.82 Ac.	—	$960 60.10 Ac.	—	$300 5.24 Ac.	—
17	824.90	5/21/57	5/29/57	$190,000										
			Imps.	25,000				$1,500 20 Ac.	$1,200 10 Ac.	—	$500 100 Ac.	$300 20 Ac.	—	$100 675 Ac.
			Land	$165,000	$200	$165,500	$200 Ac.							
27	188.00	10/11/56	11/30/56	$ 35,000	$186	$ 37,600	$200 Ac.	—	—	—	$850 25 Ac.	—	—	$100

*Option on 11/1/56

SUMMARY AND CLASSIFICATION OF ACREAGE SALES
Illustrative of the Testimony of
Laurence Sando, M.A.I. for Parcel CR-17 in Civil 974-57 PH filed 8/12/57

Sale No.	Acres	Deed Dated	Deed Recorded	Sale Price	Aver. per Acre	Price adjusted to Aug. 1957		Orchards	Irrigated	Fairly Level	Mesa or Rolling	Wooded Creek Land	Moderate Slopes or Ridges	Steep Hills or Mountainous	
30	20.91	3/23/56	5/7/56	$ 24,500	$1,172	$ 27,000	$1,291	—	—	—	$1,291 20.91 Ac.	—	—	—	
31) 32)	25.19	2/12/55	4/18/55	$ 19,500	$774	$ 23,400	$930	—	—	—	$1,200 18 Ac.	—	$250 7.19 Ac.	—	
33	20.78	3/27/56	4/20/56	$ 16,000	$770	$ 18,000	$866	—	—	—	$866 20.78 Ac.	—	—	—	
34	493.79	3/14/56	4/18/56	$ 49,370	$100	$ 57,000	$115	—	—	—	—	$315 75 Ac.	$190 127 Ac.	$80.00 37.57 Ac.	$25.00 254.22 Ac.
35	78.69	2/11/55	6/8/55	$ 12,000	$150	$ 15,750	$200	—	—	—	—	—	$200 78.69 Ac.	—	
36	131.00	9/19/55) 3/2/56)	9/27/55) 3/30/56)	$ 90,000	$687	$104,800	$800	$1,400 29 Ac.	—	$860 60 Ac.	—	—	$300 42 Ac.	—	
36a	25.82	2/8/57	3/7/57	$ 33,000	$1,300	$ 33,000	$1,300	$1,750 10 Ac.	—	$1,200 11.82 Ac.	—	—	$325 4 Ac.	—	
38	39.00	2/20/56	3/6/56 Imps. Land	$ 65,000 15,000 $ 50,000	$1,282	$ 69,600 15,000 $ 54,500	$1,400	—	—	$1,400 39 Ac.	—	—	—	—	
39	39.64	3/4/55	4/5/55	$ 16,500	$416	$ 20,000	$505	—	—	$505 39.64 Ac.	—	—	—	—	
41	28.26	12/17/56	12/28/56	$ 29,000	$1,026	$ 30,500	$1,079	—	—	$1,300 20.42 Ac.	—	$500* 7.84 Ac.	—	—	

*Along Ventura River

SUMMARY AND CLASSIFICATION OF ACREAGE SALES
Illustrative of the Testimony of
Laurence Sando, M.A.I. for Parcel CR-17 in Civil 974-57 PH filed 8/12/57

Sale No.	Acres	Deed Dated	Deed Recorded	Sale Price	Aver. per Acre	Price adjusted to Aug. 1957		Rolling	Lower Slopes	Mountainous
45	320.40	6/30/54	7/6/54	$240,337	$750	$413,640	$1,291 Ac.	$1,960 / 150 Ac.	$1,050 / 108 Ac.	$100 / 62 Ac.
45A	230.40	5/27/56	5/27/56	$194,750	$845	$224,640	$975	$1,750 / 60 Ac.	$1,050 / 108 Ac.	$100 / 62 Ac.
46	128.12	11/15/55	2/3/56	$128,000	$1,000	$169,200	$1,320	$2,000 / 50 Ac.	$1,300 / 50 Ac.	$150 / 28.12 Ac.

SUMMARY AND CLASSIFICATION OF ACREAGE SALES IN CONEJO VALLEY
Illustrative of the testimony of Laurence Sando, M.A.I. in the above action

51	693.35	3/15/55	4/1/55	$275,000	$400	$376,000	$543	$1,080 / 280 Ac.	$450 / 110 Ac.	$80 / 303 Ac.
52	597.87	7/7/55	11/25/55	$315,000	$525	$410,000	$685	$1,200 / 300 Ac.	$275 / 150 Ac.	$60 / 148 Ac.
53	284.49	6/9/55	6/30/55	$202,500	$713	$263,150	$925	$925 / 284.49 Ac.	—	—
54	114.62	11/9/56	11/15/56	$238,000	$2,076	$261,800	$2,284	$2,284 / 114.62 Ac.	—	—
55	252.00	4/25/57	5/21/57	$520,000	$2,064	$535,500	$2,125	$2,125 / 252 Ac.	—	—
56	100.21	1/11/57	2/26/57	$200,000	$2,000	$215,000	$2,150	$2,150 / 100.21 Ac.	—	
57	266.07	11/1/54	11/23/54 Imps. 35,000 Land $122,500	$157,500	$460	$174,000	$654	$1,500 / 41 Ac.	$500 / 225 Ac.	
58	494.39	11/13/56	11/30/56	$120,000	$243	$130,640	$264	$1,200 / 70 Ac.	—	$110 / 424 Ac.

APPENDIX "B."

CHART NO. 1

Action No. 974-57 PH
Date of Value—
August 12, 1957

Opinion of Value of Whole Parcel (1594.52 Ac.) Before Take

By Jerry B. Carll, Sr.

LAND: All as a part of the larger parcel before the taking.

Classification No. 1:		22-1	$3176
214.82 Ac.	East of Coyote Creek	23-5	3325
106.21 Ac.	West of Coyote Creek	SB-1	3358
17.27 Ac.	Deep Cat Lake	SB-2	2893

338.30 Acres of gentle sloping, rolling land, having a highest and best use of subdivision with riparian and/or appropriated water rights in Coyote Creek capable of constant year around supply sufficient to meet all the requirements of a residential subdivision of 321.03 acres; and included as a part of this classification the 17.27 acres of Deep Cat Lake.

Items #15, 16 and part of Items #13

By reason of the ideal location in relation to the urban facilities of Ojai, Ventura, and Santa Barbara; the topography, climate, view, and clean environment; the seclusion from the general public, and highway traffic, these lands were available for subdivision, and could have been subdivided prior to the taking.

All public utilities needed were available.

338.30 Acres @ $3,100 per acre $1,048,730.00

CHART NO. 1—Continued

Classification No. 2:

154.26 Acres	Having a highest and best use for subdivision, but at a higher cost for development than the lands in Classification No. 1. These lands	19-7 19-8 19-10 22-2	$1625 2327 1862 2684
Part of Item #13	are sloping, undulating, and cut through with some small intermitant stream beds which would necessitate larger sites, and more costly roads. The sites would probably be of estate size. The development of a golf course on part of this classification of land would be very logical, in order to take advantage of the natural topography and beauty inherent and already available. The privacy available, by reason of location would make the lands of this classification admirably suited to a country club type of development. These lands have all of the attributes necessary for this type of development.	SB-2	2893
	154.26 Acres @ $1,850 per acre		$ 285,381.00

Classification No. 3:

38.52 Acres	Lands having a highest and best use for view type exclusive country estate. These lands are situate	23-7 SB-3 SB-4	$3996 2057 3149
Item #1	atop the highest elevations east of Coyote Creek at the southeast corner of the property. They have a panoramic view, outstanding seclusion, and sufficient water for development to this use.		
	38.52 Acres @ $2,000 per acre		$ 77,040.00

CHART NO. 1—Continued

Classification No. 4:

12.23 Acres	Having a highest and best use of protective fringe lands to the exclusive country estate lands of classification No. 3. These are sloping to steep lands between Coyote Creek and the country estate lands.	19-9 19-10 22-1 SB-2	$250 236 231 258
Part of Items All of 2. plus 9.08 ac. Of Item 11—			
	12.23 Acres @ $250 per acre	$	3,057.00

Classification No. 5:

67.60 Acres	Creek bottom land having a highest and best use of exclusive recreation and park lands. These lands would develop as a part of the subdivision and country club developments as an added amenity. The land has many beautiful cabin sites, and could be sold for such use, but it would be better used as first mentioned. These lands extend from Cola Dam down Coyote Creek to the south property line, and also westward up a wooded creek bottom west of the headquarters. It is very scenic and beautiful and could also provide sites for picnic grounds.	23-2	$866
Items 10— 5.69 ac. 9—17.22 ac. 8—16.50 ac. 11—11.19 ac. 3— 9.70 ac. 4— 7.30 ac. 67.60 ac.			
	67.60 Acres @ $1,000 per acre	$	67,600.00

Classification No. 6:

10.00 Acres	Having no foreseeable utility, being rough and steep, but would be protective land in the event of development of a dam at Dunshee Damsite.	19-9 19-10 22-2	$62 59 66
Part of Item #5			
	10.00 Acres @ $50.00 per acre	$	500.00
		25-1	75

CHART NO. 1—Continued

Classification No. 7:

12.06 Acres	Headquarters area, having a highest and best use for development headquarters. These lands are already developed to a high degree and by reason of the size and type of the main house, the guest house, and other facilities that could be used in developing all the lands to their highest and best uses, these lands would be very valuable.	23-5 23-7 SB-1	$3325 3996 3358
Part of Item #4			
	12.06 Acres @ $4,000 per acre	$	48,240.00

Classification No. 8:

107.59 Acres	Having a highest and best use for large rural rustic estates. These are mostly steep rough lands with slight utility possibilities, but the creek bottom land has some recreational utility and there are several view type building sites on the ridges and benches of Item #14 south of Coyote Creek and north of Item #13.	20-1 23-2	$284 216
	107.59 Acres @ $250 per acre	$	26,897.00

Classification No. 9:

277.65 Acres	Having a highest and best use for large acreage estates. These are sloping hillside lands, brush covered, with several good springs.	19-9 19-10 23-6 24-1	$1032 1862 1562 1067
Items #5, 17 & 8	There are trees in the canyons and on the lower slopes. These lands have many excellent building sites, and numerous small bench lands. Orchards could be planted on a large portion of these lands. They afford very excellent views and are very desirable lands.	25-1	1000
	277.65 Acres @ $900 per acre	$	249,885.00

CHART NO. 1—Continued

Classification No. 10:

19-10 $1862	10.33 Acres	Having a highest and best use for protective fringe and approach way to the western portion of classification No. 1—This is an alternate approach to the area west of Coyote Creek and would in all probability be used for the main access.	
19-11 1664			
Item #6			
	10.33 Acres @ $1,700 per acre		$ 17,561.00

Classification No. 11:

136.53 Acres	Having a highest and best use of large acreage estates. These lands, while having the same name as classification No. 9, are not considered as being as desirable or as having as many amenities. There are no known springs, and the water for development would have to be pumped from Deep Cat Lake. These lands are particularly suited, however, to the rural acreage estate type of development, particularly the northwest portion thereof. The land is sloping hillside, hilltop, and an intermitant creek borders it on the south. The land is penalized for the cost of roads and utilities.	19-6 $1066 10-10 1862 22-2 502	
Part of Item #21			
	136.53 Acres @ $500 per acre		$ 68,265.00

CHART NO. 1—Continued

Classification No. 12:

118.29 Acres	Having a highest and best use of large estates. These estates would be 10 to 40 acres and of the hideaway type. These lands are not of as high a caliber as those of classifications 9 and 11 and are more nearly like those in classification No. 8. These lands do have some building sites that are very good and by careful planning of roads for driveway purpose, these could be very appealing by reason of their amenities. The cost to pump water and bring in utilities as well as road cost puts a penalty against these lands.	Sale No. / Acre Adj. Price 22-2 $502 SB-2 258	
	118.29 Acres @ $350 per acre		$ 41,401.50

Classification No. 13:

311.16 Acres	Having a highest and best use of grazing land, being steep, rough, remote, and without practical access.	Sale No. / Adj. Price 23-5 $144	
Item 21— 31.16 ac. 23—280.00 ac.			
311.16 ac.			
	311.16 Acres @ $100 per acre		$ 31,116.00
1594.52 Acres			
	Total of Larger Parcel Contributed by Land		$1,965,673.00

CHART NO. 1—Continued

Improvements

3600 sq.ft.	Main House	$ 65,000
2000 sq.ft.	Guest House	20,000
	2 Unit Bungalow	7,500
	Bunk House	8,500
	Ranch Kitchen, Mess Hall & Apt.	5,000
	Milking Barn	8,000
	Milkers House	2,500
	Work Shop & Butchers Shop	5,500
	Horse Barn & Corral	10,000
	Hay Shed	2,000
	Hay Barn—next to Milk Barn	6,000
	Bull & Calf Pens	300
	Tool Shed	750
	Gas Station	250
	Grease Pit	100

Total Value Contributed to the Whole by Improvements	$141,400	
The Fair Market Value of 1594.52 Acres Considered as a Whole and as Improved on August 12, 1957, and Before the Taking		$2,107,073
	Say	$2,107,000

CHART NO. 2

Action No. 974-57 PH
V-R Ranch
Date of Value:
August 12, 1957

Opinion of Value of Remainder (768.46 ac) After Take

By Jerry B. Carll, Sr.

14.01 Acres	Originally having a highest and best use of subdivision classification No. 1, and in the after condition, having lost its water rights, and being subjected to limited access and the public using the project, has a highest and best use of dry farming.	23-2 24-1	$1298 533
	14.01 Acres @ $350 per acre		$ 4,903.00
60.89 Acres (44.36) (16.53)	Originally classification No. 2, but in the after condition having a highest and best use of dry farming.	Sale No. 23-2 24-1	Adj. Price $1298 533
	60.89 Acres @ $350 per acre		$ 21,311.00
17.96 Acres	Originally classification No. 8, but in the after condition having a highest and best use of grazing land.	Sale No. 24-1 25-1	Adj. Price $80 75
	17.96 Acres @ $75 per acre		$ 1,347.00
109.62 Acres	Originally classification No. 9 on the slope of Laguna Ridge, but in the after condition has a highest and best use of grazing land.	Sale No. 23-2 23-5 23-7	Adj. Price $216 144 198
	109.62 Acres @ $200 per acre		$ 21,924.00
254.82 Acres	Originally classifications No. 11 and No. 12, and called yonder acres, but in the after condition this is absolutely dry land, and has a highest and best use of dry grazing land.	Sale No. 22-2 SB-2	Acre Adj. Price $66 77
	254.82 Acres @ $100 per acre		$ 25,482.00
311.16 Acres (31.16) (280.00)	Originally classification No. 13, and in after condition has same highest and best use.	Sale No. 19-9 19-10 24-1	Adj. Price $62 59 53
	311.16 Acres @ $50 per acre		$ 15,558.00
768.46 Acres	Remainder Valued @		$ 90,525.00

CHART NO. 3

PART TAKEN

324.29 Ac.	of Classification No. 1 324.29 Acres @ $3100 per ac.	$1,005,299.00
93.37 Ac.	of Classification No. 2 93.37 Acres @ $1850 per ac.	$ 172,179.50
38.52 Ac.	of Classification No. 3 38.52 Acres @ $2000 per ac.	$ 77,040.00
12.23 Ac.	of Classification No. 4 12.23 Acres @ $250 per ac.	$ 3,132.50
67.60 Ac.	of Classification No. 5 67.60 Acres @ $1000 per ac.	$ 67,600.00
10.00 Ac.	of Classification No. 6 10.00 Acres @ $50 per ac.	$ 500.00
12.06 Ac.	of Classification No. 7 12.06 Acres @ $4000 per ac.	$ 48,240.00
89.63 Ac.	of Classification No. 8 89.63 Acres @ $250 per ac.	$ 22,407.50
168.03 Ac.	of Classification No. 9 168.03 Acres @ $900 per ac.	$ 151,227.00
10.33 Ac.	of Classification No. 10 10.33 Acres @ $1700 per ac.	$ 17,561.00
826.06 Acres		$1,565,665.00
	Improvements	$ 141,400.00
	Fair Market Value of Parcel CR-17 as of August 12, 1957	$1,707,065.00

APPENDIX "C."

Answer to Appellant's Argument "C".

(Appellant's Br. pp. 11-17.)

In its Argument "C", the Government contends that the findings were inadequate for intelligent judicial review. This contention is the same as the Government's second objection urged before the District Court, *i.e.:*

> "2. The findings of the commissioners on which they base their awards are insufficient as a matter of fact and inadequate as a matter of law." [R. 62.]

The only specification before the District Court of the alleged insufficiency as a matter of fact of the findings was the Government's contention that certain additional details, set forth in its proposed Supplemental Findings (see Appendix "B" this brief) should have been found by the commission. The Government made no specification of wherein the findings were "inadequate as a matter of law", though invited to do so. The Government itself filed no proposed findings of its own that would satisfy its own present demands. Attached hereto as Appendix "B" is the Government's Request for Findings of Fact, filed December 5, 1960, together with Supplementary Request for Findings of Fact, filed December 8, 1960. The Government filed no other proposed findings of fact or conclusions of law.

We cannot refrain from commenting upon the patently untrue statement in footnote 5 on page 17 of Appellant's Brief to the effect that:

> "The fact is that the findings of the commission represented adoption *in toto,* except for the

amount awarded, of proposed findings submitted by the landowners. See affidavit and appendix, *infra.*"

In the first place, no amount was contained in our proposed findings. Secondly, those proposed findings that were adopted were supported by evidence, as set forth in the citations to evidence in our proposed findings. And thirdly, most of the matters are now considered by Appellant to be undisputed matters (Appellant's Br. p. 17). And lastly, on the vitally important issue of highest and best use of the areas of the property [Findings 18 and 19, R. 43-48] the commission did not adopt our propsed findings *"in toto"*—far from it—we sincerely wish they had because then the verdict would probably have been between $2,302,-000.00 and $2,016,000.00, rather than $1,163,400.00.

The highest and best use of the property was one of the most important issues bearing on market value, the other being the water resources available. A cursory comparison between Findings 18 and 19 [R. 43-45] of the Commission and the findings proposed by Appellee (see proposed Findings 18 and 19—Appendix to Appellant's Br., pp. 45-50) shows that the commission did not adopt defendant's proposed findings *in toto;* not only did the commission drastically change the proposed findings, they found many uses entirely different from these proposed, for example:

(b) 154.26 ac.—proposed use, residential subdivision; use found, rural homesites.

(e)(2) 51.40 ac.—proposed use, exclusive recreation and park lands for development as part of a subdivision; use found, cabin sites.

(g) 12.06 ac.—proposed use, a dude ranch; use found, ranch home.

(k) 136.53 ac.—proposed use, large acreage estates; use found, rural homesite or cabinsite with limited agricultural possibilities.

(l) 118.29 ac.—proposed use, large estates ranging from 10-40 acres and of so-called hideaway type; use found, cabin sites.

Compare uses found [R. 43-45] with uses in proposed findings (Appellant's Br. Appendix pp. 45-50) and it can readily be seen that many additional suggested uses and refinements thereof were changed or eliminated by the commission. The statement in footnote 5, Appellant's Brief page 17, that findings of commission represented adoption *in toto,* except for amount awarded, of the proposed findings submitted by the landowners is just not true.

Examination of the findings contained in the "Benning" case report in case No. 17394 (the 1022 acre parcel adjoining the subject parcel on the south) shows that many of the facts regarding economy, history and growth of the area, climate, highway, rail, and air transportation, etc., are identical. It would be surprising if they were not, since they are in the same area and the same environmental factors ("undisputed matters." Appellant's Br. p. 17) affect both parcels and the findings are based on the same evidence, introduced on stipulation by reference. [See Deft. Ex. "Y", list of "Dunshee" exhibits introduced by stipulation]. Aside from those environmental facts which are identical to those found in the "Benning" case report, comparison of Finding 10 [R. 24-30] regarding

facts found regarding area, topography, terrain, vegetation, improvements, and classification of areas, with proposed Finding 10 (Appendix to Appellant's Br. pp. 30-35) shows that many matters were changed, and so much matter deleted from the proposed Finding 10 that it would be a monumental task to specify them all in this brief. Two things are clear, however. First, that the commission, though apparently using Appellee's proposed findings as the basis for their findings, carefully analyzed, altered, and eliminated the material as to show the findings were their carefully considered product, and, second, all the findings are supported by substantial evidence. Appellant has not pointed to any finding that is not so supported.

APPENDIX "D".

Response of Defendant V-R Ranch Co. to Plaintiff's Partial Memorandum in Support of Plaintiff's Objections to Commissioners' Report (Objections 6, 7, 8, and 12).

United States District Court Southern District of California Central Division.

United States of America, Plaintiff, vs. 826.06 acres of land, more or less, in the county of Ventura, State of California, V-R Ranch Co., a corporation, et al., Defendants. No. 974-57-PH Civil

Comes now defendant V-R Ranch Co., a corporation, and responds to plaintiff's written memorandum covering plaintiff's original objections to the commissioners' report—being objections 6, 7, 8, and 12.

In its partial memorandum, the plaintiff covers only original objections 6, 7, 8, and 12, stating that plaintiff will file a supplementary memorandum covering objections 15, 16, 18, and 31. Accordingly, defendant is confining this memorandum to the answers to plaintiff's written arguments regarding objections 6, 7, 8, and 12 only. Defendant respectfully calls the court's attention to the statement of plaintiff that it does not waive any objection to said report previously argued before this court, but that: "It maintains that an examination by the court of the exhibits and transcript in the matter will verify the validity of these objections, and requests the court to make such an examination."

In the absence of any specific transcript reference, defendant *at this time* is unable to respond to these objections and calls the court's attention to that portion of the Circuit Court's written opinion (page 13) in which it is stated:

> "It is the function of the district court to review the commission's report and findings in the light of objections made to it and to resolve the issues presented by such objections. It certainly need not, sua sponte, conduct its own search for error."

Defendant will make written response to each of the original objections as soon as these objections have been supported by the Government by specific transcript reference. Meanwhile, defendant is confining its written response to the arguments presented in the partial memorandum covering objections 6, 7, 8, and 12.

The first dispute mentioned by the plaintiff is:

> "Do the general findings of 'regional' transition from 'agricultural to residential character' set forth in the report have 'any application or relevance to the lands in question'?"

The court's attention is respectfully directed to that portion of the Circuit Court's opinion (page 13) in which the court states:

> "The highest and best use is not found from the past history or present use of these lands but from reasonable future probability *in the light of the history of the region in general* in its transition from agricultural to residential character." (Italics added.)

Answer to Objection 6: The findings in the report covered by finding No. 5 relate to the economy, history, and growth of the *area*, including the immediate environs of the said property.

The Government makes no objection to the facts as found, but apparently only contends that the findings are immaterial and misleading and do not support the

awards of the commissioners in that there is "uncontraverted evidence in these proceedings that the greatest part by far of the economic, residential, and population growth of Ventura County * * * occurred in the coastal cities of Ventura, Oxnard, and Port Hueneme and not in the immediate environs of the property".

The facts that are set forth and to which objection 6 is directed (Report, page 4, line 18, to page 6, line 6) deal primarily with the general regional growth and are specifically covered by defendant's Exhibit "AA" (Dunshee exhibit) in evidence by reference in defendant's Exhibit Y (Tr. pages 68-71) in evidence by stipulation, and support the findings of highest and best use which are found "from reasonable future probability in the light of the history of the region in general in its transition from agricultural to residential character".

It is also significant to note that the paragraph following the portion objected to by objection 6 makes specific findings with regard to the growth of the cities and communities in closest proximity to CR 17, being the cities of Ventura, Ojai, Oakview, and Meiners Oaks, and the report specifically finds (page 6, lines 7 to 22) the population of these cities and communities "sharing and participating in the growth of Ventura County". These findings are not objected to by the Government.

With respect to the reference in plaintiff's partial memorandum to plaintiff's Exhibit 20a, which was introduced in evidence in cases Nos. 20,557 PH and 877-57 PH, but which was not introduced in evidence in the instant case. Reference to the transcript index listing plaintiff's exhibits indicates that the only portion of Exhibit 20a introduced in evidence in the instant case

was introduced as plaintiff's Exhibit 2 in evidence herein (Tr. page 1540) entitled "Tabulation of Subdivision Lots Sold By Years, Ventura County".

In this respect, directing the court's attention to plaintiff's Exhibit 2 in evidence herein, the court's attention is also respectfully directed to the testimony of defendant's expert witnesses Mr. Carll (Tr. page 2073, line 20, to page 2077, line 1), and Mann (Tr. page 1538, line 18, to page 1566, line 2). An examination of this testimony reveals that the witnesses were definitely of the opinion that portions of the subject property were immediately available, both physically and economically, for development in residential subdivisions based upon their opinion of the reasonable future probability in light of the history of the region in general in its transition from agricultural to residential character.

Answer to Objection 7: Again plaintiff makes no objection that these facts found are not supported by the evidence, but contends that the factors which contribute to the rapid growth of the *county* are immaterial and misleading and do not support the awards of the commissioners in that there is no evidence in the proceeding that these factors were operative to any appreciable extent in the vicinity of the said property, to wit, the Santa Ana, Coyote Creek and Ojai Valleys.

In the first place, the court's attention is respectfully directed to the finding (page 6, lines 7 to 22) of the report, of the cities and communities in closest proximity to CR 17, and the specific finding to which the Government makes no objection—that these cities and communities were sharing and participating in the growth of Ventura County. The defendant's witnesses have testified that these factors were material and would be

considered by all well-informed purchasers in view of the reasonable future probability in light of the history of the region (Tr. page 1538, line 18 to page 1566, line 2—defendant's witness Mann—and Tr. page 2073, line 20, to page 2077, line 1—defendant's witness Carll). See also cross-examination of plaintiff's witness Mr. Evans (Tr. page 2448 to page 2465).

Defendant assumes that there is no objection to the evidence supporting the facts found in that portion of the report covered by objection 7 (page 6, line 26 to page 8, line 1), which the report specifically states applies to the County of Ventura, and the further fact that the facts set forth in the report (page 8, lines 2 to 25), which are not objected to, clearly show that the commission had in mind the varying degrees of growth and the varying effect on various portions of the county of the population growth, the economic and growth generally of the various areas in the county. In addition to the facts set forth in the report (page 8, lines 2 to 25) to which the Government has made no objection, the report further points out (page 8, lines 16 to 25) that: "In addition to the factors contributing to the growth of the County there were also factors limiting the growth of the CR 17 area." These factors include relatively small holdings of properties held in tight ownerships (see witness Carll, Tr. pages 1903, et seq.) to which the Governnment has made no objection.

It is therefore clear that the objection to materiality is not tenable since all of this evidence was introduced by stipulation and was testified to by all of the various witnesses. Nor can the facts covered by objection 7 be "misleading" in view of the fact that the report makes it very clear that in addition to factors contribut-

ing to the growth of the *County* there were also factors limiting the growth of the CR 17 area.

Answer to Objection 8: In objection 8, the Government contends that there was *no evidence* in the proceeding to support the findings set forth in finding No. 5, beginning at page 8, line 26, and ending at page 8, line 30, which finding reads:

> "That with respect to the lands within the Santa Ana and Coyote Valleys and immediately surrounding areas, many of said properties were in the transition stage from dry farming and more intensive agriculture, to development for small rural estates and residential subdivisions."

In response to this contention, the court's attention is respectfully directed to Dunshee Exhibit "AA"—House Document 222 (in evidence by *stipulation* and by reference defendant's Exhibit Y, Tr. p. 71). Attention is directed specifically to pages 27 through 30 and pages 76 through 77.

In addition to the facts set forth in said House Document 222, the commissioners viewed the entire area, including the subject property, on July 26 and 27 [Tr. pages 75 to 173]. The commissioners also viewed the entire area in connection with the so-called Dunshee cases, Nos. 20-577 PH and 877-57 PH, for a period of four full days, including an examination of all the sales, and it was stipulated by the parties that this view would also apply to and could be used in connection with the trial of CR 17. This view was in December of 1959.

Answer to Objection 12: Objection 12 is to a portion of the finding set forth in finding No. 6 be-

ginning at page 9, line 29, and ending on page 10, line 1, that "these buyers were, at the date of the taking, actually acquiring lands similar in type and character to the subject parcel, in other areas such as the Conejo and Thousand Oaks areas for the same or similar uses and purposes". The objection recites that this finding is erroneous in that there is no evidence in the proceeding to support such finding. In answer to this contention, in the first place finding No. 6 is one complete sentence and objection 12 takes a single phrase out of context and objects only to it. Reading the entire finding in its context, it is unchallenged that (1) to the date of the taking there were buyers in the open market seeking to acquire lands of the character of said parcel for development and use (Findings, page 9, lines 27 to 29), and (2) that said buyers were acquiring similar and comparable properties for both immediate development and use and also for future development and use (Findings, page 10, lines 1 to 3), and also (3) finding no. 7 (page 10, lines 6 to 9) that buyers in these areas were acquiring lands for similar and comparable uses in areas having a climate, scenic beauty, water supply, and general environment less favorable than that of the subject property, which finding is not objected to by the Government.

It is in the context of these *unchallenged* findings that we must examine the phrase above objected to as erroneous as having no evidence to support it.

Time would not permit a detailed review of all of the sales in the Conejo and Thousand Oaks areas. The court's attention is respectfully directed to the so-called 19 series showing eleven sales in the area of Conejo

and Thousand Oaks, all of which the commissioners examined in detail. These sales are described in detail as follows:

Defendant's expert witness George Mann—Tr. page 1273 to page 1341;

Defendant's expert witness Jerry Carll, Sr.—Tr. page 1781 to page 1840, line 11.

In its partial memorandum plaintiff makes passing reference to objection 31. Objection 31 states that there is no evidence in these proceedings, other than the bare opinion of defendant's witnesses to support Finding 20, page 31, line 32, to page 32, line 5, reading:

> "The Commissioners find that Conejo Valley is and was a suitable area in which to find sales of property sufficiently alike to give some reasonable index of value for use in determining the fair market value * * * ."

In response to this objection, the court's attention is respectfully directed to the fact that the commission on several occasions carefully examined the Conejo and Thousand Oaks area.

Both defendant and Government expert witnesses used Conejo Valley sales (George Mann—Tr. page 1309 to page 1341; Jerry Carll, Sr.—Tr. page 1809, line 23, to page 1840, line 11, and Tr. page 1781, line 19, to page 1797). Defendant's Exhibit V entitled "List of Comparable Sales in Evidence by Stipulation" (Tr. page 66) shows that there were eleven sales used by defendant's expert witnesses in the 19 series which cover the Conejo and Thousand Oaks area.

Furthermore, plaintiff's witnesses likewise utilized and discussed the Conejo Valley sales. The court's attention is directed to plaintiff's Exhibit 47 (Tr. page 3572) entitled "Summary—Classification 'Average' Sales—Sando", in which it will be observed that Mr. Sando lists eight sales, being Government sales Nos. 51 through 58, in that portion of Exhibit 47 entitled "Summary and Classification of Average Sales in Conejo Valley Illustrative of Testimony of Lawrence Sando, M.A.I."

Mr. Sando discusses the Conejo sales (Tr. page 3690, line 24, to page 3697, line 18), and compares Conejo Valley with Santa Ana Valley (Tr. page 3751, line 6, to page 3756, line 5). In stating his reasons for his opinion Lawrence Sando includes within his reasons "the prevailing prices in Conejo Valley", which, in his opinion, were about double that in Santa Ana-Coyote Valley (Tr. page 3772, lines 12 to 18).

Thus, it is clear that the Government's statement that there is no evidence other than the bare opinion of defendant's witnesses to support the finding that Conejo Valley "is and was a suitable area in which to find sales of property sufficiently alike to give some *reasonable index of value* * * * " is clearly supported by the evidence. Not only did the defendant's witnesses state their opinions but they gave numerous reasons for their opinions, including a detailed analysis of the similarities in topography, climate, water supply, economic ripeness for subdivision, etc. (see particularly Tr. page 1538, line 18, to page 1566, line 2—Mann; and Tr. page 2073, line 20, to page 2077, line 1—Carll).

In view of the fact that the commission had before it a detailed description of all of the witnesses' various sales, and in further fact that they examined not only the subject property, but all of the sales in question, it is difficult to see how the Government can say there was no evidence to sustain the commission's finding 6 and the commission's finding 20.

In this connection, although not specifically covered by plaintiff's partial memorandum, defendant calls attention to plaintiff's objection 30 in which the Government objects to finding No. 20 (Report, page 31, lines 26 to 31) that:

> "The Commissioners find that as of August 12, 1957, there were willing buyers in the open market for lands which were reasonably adaptable to all the uses which the evidence of both plaintiff and defendant showed that the lands in the subject property were reasonably adaptable and capable of being used as of said date."

This objection was made on the ground that such finding is misleading and immaterial, on the ground that plaintiff's witnesses did not testify that the portions of the whole property covered by findings Nos. 18(a) through 18(e), and findings Nos. 19(a) through 19(e) were, either physically or economically reasonably adapted to and capable of being used for the uses found by the commissioners in said findings to be the highest and best use for said portions of land as part of the whole property.

In the first place, the Government clearly misunderstands finding No. 20, which is that there were willing buyers in the open market for lands, which were evidenced by the sales, and which were reasonably adapt-

able to the uses testified to by both plaintiff and defendant. The plaintiff's witnesses testified that the highest and best use of the subject property was as a stock ranch or dude ranch or to divide into several smaller ranchos (Mr. Evans, Tr. pages 2159 to 2160), or for possible golf course use (Tr. page 2162, line 16), or physically capable of being cut into one to one and one-half acre lots of which you could sell quite a few (Tr. page 2162, line 25), or subdivided into smaller estates, a dairy ranch, or what have you (Tr. page 2407, line 20, to page 2408, line 7). See also Mr. Evans' highest and best use as a stock ranch or a group of ranchos or a group of country places (Tr. page 2737, line 19), and Mr. Sando's highest and best use as a "cattle ranch in the main sense and more specifically I recognize that there is a potential subdivision for a small part of it" (Tr. page 3545, lines 7 to 22), or for use as a dude ranch (Tr. page 3546, line 1, and Tr. page 3778, line 3, et seq.).

Thus, all of the witnesses, including the plaintiff's witnesses, testified to a variety of highest and best uses for various portions of the subject property, and the commission finds in finding No. 20, in view of all of the sales which they examined and which were described to them in detail, that there were willing buyers in the open market for lands that were reasonably adaptable to all the uses which the evidence of both plaintiff and defendant showed that the lands in the subject property were reasonably adaptable and capable of being used. It is respectfully submitted that the evidence sustains this finding.

Defendant V-R Ranch Co. has been advised that the Government intends to file a supplementary memoran-

dum covering objections 15, 16, 18, and 31 not included in the partial memorandum to which this memorandum is in response. Defendant V-R Ranch Co. respectfully reserves the right to respond in writing to this supplementary memorandum if and when it is filed.

Respectfully submitted,

ANSON, GLEAVES & LARSON,
By JOHN B. ANSON,
Attorneys for Defendant V-R Ranch Co.

EVELYN DI FIORE
er 611 Sunset Boulevard, Los Angeles 12, California.
September 21 62 RESPONSE OF DEFENDANT V-R RANCH CO. TO PLAINTIFF'S PARTIAL MEMORANDUM IN SUPPORT OF PLAINTIFF'S OBJECTIONS TO COMMISSIONERS REPORT (Objections 6, 7, 8 and 12).
plaintiff
Sunset and Grand
s plaintiff
Mr. Francis C. Whelan,
United States Attorney.
s Mr. John B. Read,
Assistant U.S. Attorney,
821 Federal Building,
Los Angeles 12, California.

Evelyn Di Fiore
September 21 62
JOHN B. ANSON,
My Commission Expires
July 12, 1963

APPENDIX "E."

Transcript Pages Dealing With Water Testimony Only.

RALPH B. NUNNELLEY (V-R Ranch Co. expert witness):		
Direct examination	Tr. 379-842	463 pages
Cross-examination	Tr. 842-1210	368 pages
Re-Direct examination	Tr. 1216-1221	11 pages
Re-Cross examination	Tr. 1221-1229	8 pages
Rebuttal (labeled direct examination in index)	Tr. 3932-4198	266 pages
Cross-examination on Rebuttal	Tr. 4198-4323	125 pages
	Tr. 4329-4555	226 pages
Ralph B. Nunnelley on "water resources" alone:		1,467 pages

MAX BOOKMAN (Government water expert witness):		
Direct examination	Tr. 2529-2866	337 pages
Cross-examination	Tr. 2866-3424	558 pages
Re-Direct examination	Tr. 3424-3491	67 pages
Max Bookman total "water" testimony:		962 pages

APPENDIX "F."

Exhibit		Transcript Pages Mkd.	Rcd.
Plaintiff's:			
11	Precipitation Record Dept. Public Works California—Selby	2534	2534
12	Precipitation Record Dept. Public Works California—Mallory	2534	2534
13	Chart—Bookman—Monthly Discharge Ventura River	2536	2536
14	Chart—Bookman—Monthly Discharge Coyote near Ventura	2537	2537
15	Chart—Bookman—Discharge—Annual Matilija Creek at Matilija	2539	2539
16	Chart—Bookman—Discharge—Annual Matilija	2536	2536
17	Casitas Dam—Logs of Exploration for Borrow Area	2540	2540
18	Casitas Dam—Location of Explorations for Borrow Areas A and B	2540	2540
19	Casitas Dam—Log of Test Pit or Auger Holes	2541	2541
20	Gradation Test Ventura River Preconstruction Investigation	2542	2542
21	Topo. Map—VR Ranch and Coyote Creek Watershed	2579	2579
22	Chart—Drainage Areas Upstream of Gage, near Ventura, etc.	2589	2589
23	Chart—Measured and Estimated Discharge, Coyote Creek—Ventura	2613	2613
24	Grap Runoff at Coyote Creek near Ventura	2614	2614
25	Exhibit 25 Revised for Mathematical Corrections	2631	2631
26	Graph—Bookman—Discharge per sq. mile of Watershed	2631	2631
27	Chart, Seasonal Discharge—Coyote Creek at Deep Cat Reservoir	2668	2668
27′	Revised Chart, Seasonal Discharge, Coyote Creek at Deep Cat Reservoir	3427	3427
28	Chart, Monthly Discharge—Coyote Creek at Deep Cat Reservoir	2673	2673
28′	Revised Chart, Monthly Discharge—Coyote Creek at Deep Cat Reservoir	3427	3427

Exhibit		Transcript Pages	
		Mkd.	Rcd.
29	Chart—Estimated Net Evaporation—Coyote Creek	2676	2676
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31	Chart—Inflow—Coyote Creek at VR Ranch, Retained Storage	2697	2697
31′	Revised Chart—Inflow—Coyote Creek at VR Ranch—Retained Storage	3427	3427
32	Operational Study, Deep Cat Reservoir —Bookman	2703	2703
32′	Revised Operation Study Deep Cat Reservoir—Bookman	3427	3427
33	Chart—Inflow, Storage and Draft—Deep Cat Reservoir	2704	2704
34	Operational Study—Deep Cat Reservoir —Bookman	2715	2715
34′	Revised Exhibit 34 Engineering Study —Deep Cat and Dam No. 2	3427	3427
35	Chart, Bookman, Specific Yield ,etc.	2734	2734
35′	Revised Chart—Bookman, Specific Yield, etc.	3427	3427
36	Graph, Bookman—Profile—Recent Alluvium, VR Ranch	2746	2746
36′	Revised Graph, Bookman—Profile—Recent Alluvium—VR Ranch	3427	3427
37	Chart—Bookman—Relationship, Ground Water Storage—Rising Water, etc.	2766	2766
37′	Revised Chart—Bookman—Relationship, Ground Water Storage—Rising Water, etc.	3427	3427
38	Graph—Bookman—Percolation Capacity, Rising Water, etc.	2766	2766
38′	Revised Chart—Bookman—Percolation Capacity, Rising Water, etc.	3427	3427
39	Chart—Bookman—Yield, Ground Water, VR Ranch	2774	
39′	Revised Chart—Bookman—Yield, Ground Water, VR Ranch	3427	3427
40	Chart—Bookman—Sedimentation	2792	2792
40′	Chart—Bookman—Sedimentation, Revised	3427	3427

Exhibit		Transcript Pages Mkd.	Rcd.
41	Report of Survey—Santa Clara, Ventura Rivers and Calleguas Creek Watersheds, Two Volumes	2819	2819
42	Engineering Study—Bookman—Duty of Water, Residential Area	2828	2828
43	Summary of Water Supply for VR Ranch	2849	2849
43′	Summary of Water Supply, VR Ranch, revised	3427	3427
44	Chart—Bookman—Cost Estimate	2854	2854
54	Illustrating Mr. Nunnelley's Computation on Exhibit 3V	4274	4282
55	Analysis of Formula on Sheet 1 D's to 3L	4437	4438
56	Photostat—Formulas for Determining Runoff above Deep Cat	4446	4453
57	Analysis of Procedure of D's Exhibit 3Z	4448	4452
58	Topo Map, Casitas Dam Reservoir Area	4490	4490
59	Photostat re: Flood Frequencies and Sedimentation	4498	4540

Exhibit		Transcript Pages Mkd.	Rcd.
Defendant's:			
I	VRMWD Drainage Area Topo Map, Casitas Reservoir Site	37	37
T	Estimate—Flow through alluvium in CR 17 below Cola Dam	60	60
W	Compilation Hydraulic Equivalents—Conversion Factors—Nunnelley	67	
2-E	Map CR 17 showing riparian area	435	435
2-F	History of water rights	437	437
2-G	Photostat—Dunshee water notice 7/15/86	438	438
2-H	Photostat—Dunshee water notice 7/19/87	439	439
2-I	Stream flow observations—Nunnelley—Coyote Creek	493	493
2-J	Measurements of Flows—Coyote Creek—Nunnelley	494	494
2-K	Discussion—Alluvium in Coyote Creek below Cola Dam—Nunnelley	500	500
2-L	Compilation—Hydraulic terms—Nunnelley	506	506

Exhibit		Transcript Pages Mkd.	Rcd.
2–M	Comments re: Flow observations—Nunnelley	512	512
2–N	Computation of Quantity—Alluvium in CR-17 below Cola Dam	534	534
2–O	Photostatic Copies Rainfall Records, Casitas Ranch. 1927-57. (34)	559	559
2–P	Compilation—Nunnelley—re: rainfall and stream flow, Coyote	570	570
2–Q	Sedimentation Analysis—Nunnelley—Deep Cat Reservoir	604	604
2–R	Discussion—Nunnelley—Area reserved for commercial water supply	648	648
2–S	Newspaper clipping 3/12/53 Projected Recreation Center El Rancho Cola	668	668
2–V	Water Requirements Subdivisions Nos. 1 and 2. Nunnelley	757	757
3–A	Notes—Nunnelley—Records of Dept. Water Resources	917	917
3–B	Chart—Nunnelley—Years of low rainfall when Lake No. 2 would fill	1040	1040
3–C	Estimate—Nunnelley—Costs—Water System, VR Ranch	1200	1200
3–I	Graphs—Discharge Measurements—Coyote Creek	2976	2976
3–J	Chart—Nunnelley—re: P's Ex. 24 Reconstructed	2992	2992
3–K	Chart—Precipitation 1946-52	3019	3019
3–L	Chart—Nunnelley—Discharges—Coyote above Cola	3099	
3–M	Chart—Nunnelley—Engineering Study—Runoff	3107	3107
3–N	Equations—chart—re sedimentation	3251	3222
3–O	Equations chart Table 3. Equations re: peak discharges and sedimentation	3273	3273
3–P	Chart—Table 9. Resultant Cover Densities with and without treatment	3275	3275
3–Q	Sketch—Nunnelley—Illustrative of Testimony re: Page 25 of P's Ex. 41	3335	3335
3–R	Chart. Nunnelley—Specific Yield—Alluvium VR Ranch	3351	3358
3–S	Graph. Bookman. Cross Sections of Alluvium. Coyote Creek	3402	4056

Exhibit		Transcript Pages Mkd.	Rcd.
3–T	Notice of Hearing—1st modified plan bktcy. El Rancho Cola	3823	3823
3–V	Chart—Nunnelley re Exhibit 22, Mean Year Runoff	3933	3933
3–W	Nunnelley—Recomputation of P's Ex. 25′ —7 pages	3938	3938
3–X	Comments (13 pages) Charts. Graphs re: P's Exhibits 26 and 28	3987	3987
3–Y	Graph—Bookman. Monthly discharges per square mile of watershed	3998	3998
3–Z	Charts (3 pages) Nunnelley re: P's Exhibits 27 and 27′	4021	4021
4–A	Chart and Comments—Nunnelley—Specific Yield Alluvium VR Ranch	4034	4034
4–B	Chart—Table 5 Estimated Specific Yield Sediments—So. Coastal Plain	4046	4046
4–C	Comments—Nunnelley. Re: P's Exhibits: 36, 36′, 37, 37′, 38, 38′, 39, 39′	4054	4054
4–D	Comments—Nunnelley re P's Exhibit 40 (3 pages)	4101	4101
4–E	Graph, Nunnelley. Re: Exhibits 42 and 43	4120	4120
4–F	Map. Casitas Reservoir area, with areas planimetered. Nunnelley	4167	4167
4–G	Photostat. Table 4—Definition, units and ranges in variables	4191	4191
4–H	P 144 Dunshee Exhibit 53, Part II. Pacific Slope Basins. Discharge Coyote Creek	4332	4332
4–I	Photostat of portions of pages 91-92 of Bulletin 45 (Exhibit 41 Dunshee)	4483	4483

APPENDIX "G".

Examination of defendant's exhibits "2W," "3D," and "3F" will show that they are extremely detailed charts setting forth witnesses' opinions in the following matters:

(1) The value of the whole parcel (1,594.52 acres) of which the portion taken (826.06 acres) was a part, as a single unit in light of its highest and best use. These figures were as follows:

Ralph B. Nunnelley	$2,574,000.00	(Chart 1—Deft. Ex. "2W")
George S. Mann	$2,168,862.00	(Chart 1—Deft. Ex. "3D")
Jerry B. Carll, Sr.	$2,107,000.00	(Chart 1—Deft. Ex. "3F")
Bernard G. Evans	$ 660,000.00	(Pltf. Ex. 8)
Lawrence Sando	$ 671,000.00	(Pltf. Ex. 51)
Commissioners' Report	$1,330,000.00	(R. 52)

The foregoing charts contained a complete breakdown of the land classifications of the various type of land in the entire parcel of property keyed in its numbering system to defendant's Exhibit "M2"—the land classification map—and containing the number of acres and description of each classification and the witnesses' opinions of value.

(2) Value of the remainder after the taking, i.e., the value immediately following the taking of the remainder not taken (768.46 acres) in light of its then highest and best use. These figures were as follows:

Ralph B. Nunnelley	$ 252,000.00	(Chart 2 of Deft. Ex. "2W")
George S. Mann	$ 145,094.00	(Chart 2 of Deft. Ex. "3D")
Jerry B. Carll, Sr.	$ 90,525.00	(Chart 2 of Deft. Ex. "3F")
Bernard G. Evans	$ 71,750.00	(Pltf. Ex. 8)
Lawrence Sando	$ 73,000.00	(Pltf. Ex. 51)
Commissioners' Report	$ 166,600.00	(R. 52)

(3) Difference between the value of the whole before the taking and the value of the remainder after the take, representing the total damages. These figures are as set forth in the preceding paragraph under just compensation.

(4) That portion of the total damages consisting of the value on August 12, 1957, of the 826.06 acres taken (including improvements). These figures are as follows:

Ralph B. Nunnelley	$1,919,000.00	(Chart 3 of Deft. Ex. "2W")
George S. Mann	$1,754,000.00	(Chart 3 of Deft. Ex. "3D")
Jerry B. Carll, Sr.	$1,707,065.00	(Chart 3 of Deft. Ex. "3F")
Bernard G. Evans	$ 563,900.00	(Pltf. Ex. 8)
Lawrence Sando	$ 587,000.00	(Pltf. Ex. 51)
Commissioners' Report	$1,104,900.00	(R. 52)

(5) That portion of total damages constituting diminution in market value of the part not taken (severance damages). These figures are as follows:

Ralph B. Nunnelley	$ 403,000.00	(Summary of 3 charts —Deft. Ex. "2W")
George S. Mann	$ 269,500.00	(Summary of 3 charts —Deft. Ex. "3D")
Jerry B. Carll, Sr.	$ 309,410.00	(Summary of 3 charts —Deft. Ex. "3F")
Bernard G. Evans	$ 24,350.00	(Pltf. Ex. 8)
Lawrence Sando	$ 11,000.00	(Pltf. Ex. 51)
Commissioners' Report	$ 58,500.00	(R. 52)

In addition to the foregoing figures, these charts, defendant's Exhibits "2W," "3D," and "3F," admitted by stipulation of counsel, contained a detailed description of the witnesses' land classification, their reasoning, and in the case of the expert appraisal witnesses George S. Mann (Defendant's Exhibit "3D") and Jerry B. Carll, Sr., (Defendant's Exhibit "3F"), these charts contained a list by sales number of the comparable sales of assistance to these witnesses for their various opinions, together with the adjusted prices per acre of the comparable sales. For example, see Chart 1 of Defendant's Exhibit "3F" in evidence.

The opinions of value and the land classification of the Government's expert appraisers were set forth in similar detail in written exhibits. (See Bernard G. Evans—Plaintiff's Exhibit 5, Summary of Evans' testimoney as to land classification; Plaintiff's Exhibit 8,

Summary of Evans' Value Testimony; Plaintiff's Exhibit 9, Evans' Comparable Sales Pattern Chart; Lawrence Sando—Plaintiff's Exhibit 47, Sando Sales Data; Plaintiff's Exhibit 48, Sando Land Classification Map; Plaintiff's Exhibit 51, Sando Value Chart.)

Thus, the value opinions, the land classification, the reasoning and the sales used by all of the valuation witnesses were set forth in complete detail, were before the District Court, were argued by counsel, and were considered by the court.

In addition to the foregoing written exhibits, the qualifications of all of the expert witnesses, including the water engineers for both sides, were set forth in full in writing and were made exhibits in the case under stipulation of counsel that they would have the same force and effect as though the witness had testified orally into the record. For defendant's qualifications, see defendant's Exhibit "U" in evidence which sets forth in detail the general qualifications, educational background and experience, together with the special qualifications, i.e., what was done to prepare the opinions of the expert witnesses of the following:

George Lindebergh, architect, whose detailed analysis and description of the ranch improvement is set forth in defendant's Exhibit "S," Ralph B. Nunnelley, engineer and president of V-R Ranch Co.; George S. Mann and Jerry B. Carll, Sr., expert appraisal witnesses.

In similar fashion, the general and special qualifications of the Government's expert witnesses were set forth in written exhibits as follows:

Bernard G. Evans, Plaintiff's Exhibit 4; Max Bookman, Plaintiff's Exhibit 10; Lawrence Sando, Plaintiff's Exhibits 45 and 46.

In addition, all of the expert testimony, the studies made by the experts, and their conclusions regarding the water resources were all set forth in written exhibits.